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S. Hrg. 103-534

# NOMINATION OF SALLY KATZEN

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Nomination of Sally Katzen, S. Hrg....

## HEARING

BEFORE THE

COMMITTEE ON

GOVERNMENTAL AFFAIRS

UNITED STATES SENATE

ONE HUNDRED THIRD CONGRESS

FIRST SESSION

ON

NOMINATION OF SALLY KATZEN TO BE ADMINISTRATOR FOR THE OFFICE OF INFORMATION AND REGULATORY AFFAIRS (OIRA) OF THE OFFICE OF MANAGEMENT AND BUDGET

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May 19, 1993

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Printed for the use of the Committee on Governmental Affairs



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# CONTENTS

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Opening statements:	Page
Senator Glenn .....	1
Senator Levin .....	3
Senator Roth .....	4
Senator Lieberman .....	5
Senator Nunn .....	19

## WITNESSES

WEDNESDAY, MAY 19, 1993

Hon. Eleanor Holmes Norton, a Representative in Congress from the District of Columbia .....	7
Alice Rivlin, Deputy Director, Office of Management and Budget .....	8
Sally Katzen, of the District of Columbia, nominee to be Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget ...	9
Biographical and financial information .....	33
Responses to pre-hearing questions from Chairman Glenn .....	38



## NOMINATION OF SALLY KATZEN

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WEDNESDAY, MAY 19, 1993

U.S. SENATE,  
COMMITTEE ON GOVERNMENTAL AFFAIRS,  
*Washington, DC.*

The Committee met, pursuant to notice, at 9:05 a.m., in room SD-342, Dirksen Senate Office Building, Hon. John Glenn, Chairman of the Committee, presiding.

Present: Senators Glenn, Nunn, Levin, Lieberman, and Roth.

Also present: Doris Clanton, David Plocher, Deborah Cohen (Senator Glenn); Susanne Marshall (Senator Roth); John Nakahata, Nina Bang-Jensen (Senator Lieberman); and Forest Thigpen (Senator Cochran).

### OPENING STATEMENT OF CHAIRMAN GLENN

Chairman GLENN. The hearing will be in order.

We will go ahead and proceed. Senator Roth will be along directly, I think, and he has indicated it is OK with him if we go ahead with the hearing. I usually at a confirmation hearing like to have the Ranking Minority Member here, but that is OK, with his permission, we will go ahead.

Congressional Delegate Eleanor Holmes Norton has been tied up over on the House side and was going to introduce Ms. Katzen today, and she may be along shortly. She is on the way, but I think, in the interest of time, we will go ahead.

I also want to note that the man who is going to be charged with putting the "M" back in OMB, and has been nominated as Deputy Director, Mr. Lader, is also with us here this morning. On May 25, I understand, Mr. Lader, will be the day for your confirmation hearing.

We will break, if Eleanor Holmes Norton comes in shortly, and let her proceed with her introduction. I will go ahead with my opening statement.

Today, the Committee on Governmental Affairs meets to consider the nomination of Sally Katzen to be Administrator of the Office of Information and Regulatory Affairs, more commonly known as OIRA, and it is in the Office of Management and Budget.

OIRA was created more than a decade ago, amidst very high hopes that the Federal Government would ease the increasing paperwork and regulatory burdens it had placed on business and the American public. Unfortunately, the promise of that office and of Government's efforts to eliminate unnecessary paperwork and regulations has largely not been fulfilled.

As a whole, the Government has kept on with business as usual. Paperwork is collected, regulations are issued and the information in Government databanks grows and grows and grows. In fact, GAO has done a study for us on this, and GAO has told us that the Federal Government is spending over \$20 billion a year—\$20 billion a year—for information technology alone. \$20 billion a year, that is a lot of money to keep a lot of information flowing. But do we know where this information is really going, who is it really benefiting, is it really needed? Unfortunately, we don't have the answer to that. The answer basically is no, we do not know.

A major reason is that OIRA has not done its job the way it was designed to do. Instead of tackling paperwork and the larger problem of Government information management, OIRA's paperwork reduction effort was harnessed to an ideological attack on the Government's legitimate regulatory role, along with looking out for special interests. OIRA's other statutory information management duties were simply neglected.

While I have long affirmed the right, in fact, the duty of the White House to coordinate and review Federal regulations, it is my hope that OIRA, under President Clinton, will refocus its efforts to engage more in regulatory consultation and coordination, instead of just control, and emphasize the paperwork and information management roles that are the critical elements of OIRA's statutory mission.

The last few years, particularly, have seen us bogged down in debate about arm-twisting by OIRA and secret meetings with the Council on Competitiveness, secret flow of information, et cetera, et cetera. We have been into that with some of you here with Dr. Rivlin and with Mr. Lader, and with you, Ms. Katzen, in our conversations, and I don't need to go into my 2-hour dissertation of what I think of the Council on Competitiveness.

And I was very happy that one of the first things the new Administration did was eliminate it, because it wasn't working in a way which we feel Government should operate. It was operating in a very favored way for the favored few, and that is not what Government should be doing.

So we had to draw the line on what the council was doing, and that was about a 2½ year fight. Senator Levin, who has just walked in, was involved with that. We had separate meetings, he and I, one on one with the former Vice President, and we got nowhere. Anyway, it is a new day and I won't go on and on with that one.

We also have to make Government work better. I ran for reelection last year and the people of Ohio let me know at almost every stop very clearly on that campaign trail that Government is not working the way it should. They feel the heavy burden of regulations and paperwork, and it doesn't make sense to them, and that is true as individuals, it is true as big business, and it is true for small business.

So now we have a chance for a new beginning. With a new Administration, a new nominee to head OIRA, and certainly my commitment to work actively to reauthorize the Paperwork Reduction Act, I am convinced that we can put OIRA's unsatisfactory past behind us.



President Clinton is on record supporting a regulatory review process that provides executive coordination and public accountability. Both the President and the Vice President have spoken repeatedly of the need to bring the Government into the electronic information age, to insure that we have a national information infrastructure for the 21st century.

Likewise, in their commitment to "reinventing Government," as they have termed it, they have spoken of the need to streamline Government, to make it more efficient and more responsive to the needs of its customers, and those are our customers, the American public.

This perspective is also apparent from Ms. Katzen's written answers to the Committee's prehearing questions. Ms. Katzen shows an appreciation of the need to reduce paperwork, and the importance of doing so within the context of a broad strategy to improve the Government's information resources management. As a specialist in administrative law, it is also clear that Ms. Katzen understands the promise, as well as the potential pitfalls, of centralized regulatory review.

Should she be confirmed as OIRA Administrator, it will be Ms. Katzen's responsibility to balance these various interests and bring new vitality to OIRA in its very important work.

I must also mention that Committee rules require that an inquiry be conducted into the experience, qualifications, suitability and integrity of nominees. The Committee has received from the nominee financial statements, as well as detailed information on her educational background, employment record and professional achievements.

In addition, the nominee has responded in writing to prehearing questions submitted by the Committee concerning the duties and responsibilities of the position to which she has been nominated. Copies of the biographical information and prehearing responses will be placed in the record as part of this hearing and are available, upon request, at the Committee office right across the hall. The financial statements, although not included in the record, are available for inspection by the public at the Committee office.

Committee investigators have reviewed the nominee's biographical and financial information. In addition, staff have examined the financial disclosure reports submitted by the Office of Government Ethics and the OMB Ethics Officer, to insure that no conflicts of interest are present, and those letters will also be included in the hearing record.

I, as Committee Chairman, have reviewed the FBI background investigation report on the nominee, and Senator Roth, the Ranking Minority Member, has it for his review now, and I found nothing to bring to the attention of the other Committee members.

Committee rules further require that the nominee be under oath while testifying on all matters relating to her suitability for office, including the policies and programs she will pursue while in that position, and at the appropriate time I will administer the oath.

Senator Levin.

#### **OPENING STATEMENT OF SENATOR LEVIN**

Senator LEVIN. Thank you, Mr. Chairman.

I, too, am pleased that we seem finally to be on the road to getting an Administrator in place at the Office of Information and Regulatory Affairs. It has been approximately 3 years that this office has operated under an Acting Administrator, and the results and the relationships have been frustrating.

We created the Office of Administrator as an Executive Level III, because of the importance we attached to the office and because of the role that the office plays in our key regulatory and information programs, and it is long overdue that we have this position filled.

I am also pleased, Mr. Chairman, that the person nominated by the President to fill this important position is such a qualified nominee. Sally Katzen has the right credentials for this job—a strong background in administrative law and administrative procedure, experience on regulatory review issues dating back to the Carter administration, and a track record of bringing disparate views together to form a meaningful consensus.

I also believe that Ms. Katzen will not bring the ideological baggage to this office that has driven so many of her predecessors. Setting aside the nature of the ideology, the issue is the role of ideology in the regulatory review setting, and in my mind that role should be limited, if present at all.

What OIRA needs more than anything is a person with a level head, a good dose of common sense, some real life experience in how Government affects the lives of individuals, State and local governments and businesses, and a willingness to raise the tough issues and recognize reasonable answers, and I think Ms. Katzen has those qualities.

Finally, Mr. Chairman, I am enough of an optimist to at least hope, if not believe, that, with this appointment, we will be able to resolve the testy issues of regulatory review and paperwork reduction that have lingered unresolved for so long, despite the best and persistent efforts of our Chairman, might I add.

I would like to see this Administration develop an open process for regulatory review that allows the public to know who, other than the rulemaking agency, is making the decisions and upon what basis and in what time frame, and also to get the Paperwork Reduction Act reauthorized and strengthened. And I think with this nomination, particularly, and with the new Administration, we have a real shot at achieving these goals in this Congress.

I look forward to Ms. Katzen being the Administrator of this office. It is an important addition to the Administration and to Government.

Chairman GLENN. Thank you.  
Senator Roth.

#### OPENING STATEMENT OF SENATOR ROTH

Senator ROTH. Thank you, Mr. Chairman.

Finally, there sits before us an OIRA nominee, not only a nominee, but a nominee who is likely to be confirmed. So remarkable is this development, that it nearly overshadows this nominee's splendid qualifications, nearly. [Laughter.]

Mr. Chairman, the subject of regulatory review has been overly politicized. While regrettable, it is understandable. Regulatory review is the culmination of the political process. The abstract theory

of legislation meets the practical reality of daily life at the point of regulation, and all the political forces of life do not die with the passage of legislation, but continue in the afterlife of regulation.

We must all strive to overcome this. There lies before us absolutely critical work to be done. Regulations must be reviewed for their legality, their rationality, their efficiency, their conflicts, their efficacy, societal benefits, cost and their conformity with the Administration's policies.

I am sure that there may be more than one way to accomplish such review. But whatever the variation, such analyses are indispensable to the administrative state and, in my opinion, such multi-faceted analysis can be performed usefully only within the Executive Office of the President. Unless there is a significant Executive Office reorganization, the only functional reviewer is OIRA.

In recent years, Congress has passed much legislation that, in turn, will generate much regulation, so I expect to see the Federal Register grow even thicker, Mr. Chairman. You have commented on several occasions how your constituents are complaining to you about the burden of regulation. We are all receiving such complaints.

The burden is particularly heavy on small businesses, that sector of the economy that has historically generated a job surplus sufficient to offset the big business layoffs. Yet, I cannot recall any constituent asking for a workplace that is less safe or that is more dirty.

So it is no overstatement to say that the hopes and dreams of a Nation come to focus on OIRA. And while the political winds are whirling about that office fly on the extremes, that office must seek a balance. It is not a question of pitting jobs against the environment to decide which somehow prevails, but, rather, exercising mature judgment to accomplish our legislative goals in the least burdensome manner.

Mr. Chairman, I have had the opportunity to meet with the nominee and to review her record and her responses to Committee questions. She impresses me as a person who will seek to calm the political storm and will perform as well as anyone can in this difficult role. My only concern is that no one person, no matter how well qualified, can do what needs to be done.

Thank you, Mr. Chairman.

Chairman GLENN. Senator Lieberman, do you have an opening statement? You walked in just in time.

#### **OPENING STATEMENT OF SENATOR LIEBERMAN**

Senator LIEBERMAN. I was about to say sometimes you have luck. I don't know whether it's luck for the Committee, but I will try to do it briefly.

I do want to welcome Ms. Katzen, who I have had the pleasure to meet, and to say how pleased I am that she has been nominated to head OIRA.

Mr. Chairman, as you know, this office comes within the Subcommittee of this Committee that I am privileged to share, and I very much look forward to working with Ms. Katzen on projects of mutual interest.

I have a statement which I would like to include in the record.

I would just say, at the risk of repeating perhaps what she and I have talked about together, which is that this is an office that is in need of reinvention. This is a term that we love in this Committee, and it is a term, obviously, that the Administration has some affection for. But this office, particularly, not just to change the direction that so many of us in this Committee contested over the last several years, but to more affirmatively try to reach out and alter the regulatory climate in a way that is more efficient.

As I said to Ms. Katzen when we spoke personally, when I go back home and particularly talk to the small business community, I find that there are so many statutes that we have adopted with good intentions and good faith, and yet in total, accumulatively, their impact on so many small business people, particularly is heavy and ultimately, I have to say it, unreasonable.

In other words, I keep meeting good hard-working, law-abiding people who are just finding that the Government is getting in their way in a way that does not really contribute to the public interest. So I hope that you will be able to be a leader in bringing the reinventing Government approach to OIRA.

As I said to you yesterday, I think in some ways we have the opportunity here, or you do, to bring the Nixon-goes-to-China approach to governmental regulation. I guess the theory there was that everybody trusted President Nixon not to sell out to the Communists, because he was tough, and so he had the latitude to establish the relationship.

In much the same I think with this President, this Administration and yourself, people now that you share the underlying goals of so much of the regulation. You are not out to destroy some of the premises, some of the foundations. But I think that gives you and the Administration the latitude and the credibility, therefore, to try to cut through some of the regulation that has really gotten in the way.

I wish you well in that, and I look forward to working with you. Thank you, Mr. Chairman.

#### PREPARED STATEMENT OF SENATOR LIEBERMAN

Mr. Chairman, I am pleased today to welcome before this Committee Ms. Sally Katzen, the President's nominee to head the Office of Information and Regulatory Affairs (OIRA) within the Office of Management and Budget. I hope this will be the beginning of a very productive partnership between this committee and OIRA. We have a lot of work to do.

As you know, Mr. Chairman, there is a lot of concern in the public at large, especially in the small business community, about the paperwork and regulatory burdens that government places on private industry. And we should be concerned about those burdens. The time and resources that private industry spends deciphering regulations and filling out paperwork are time and resources that industry is not spending building better products, finding new markets, and creating new jobs.

Of course, not all regulatory burdens and not all paperwork is bad. We depend on government regulation to protect us against a wide variety of threats to our health and safety—from pollution to dangerous toys and other consumer products to unsafe and ineffective drugs and medical devices. We also depend on regulation to prevent consumers from being victimized by unfair and deceptive advertising, and to detect when criminals are attempting to use our banking system to launder their ill-gotten gains. Each of these quite valid governmental activities imposes some regulatory and paperwork burden.

But it is important that we do a good job—that we do a better job—of minimizing those burdens where possible. OIRA has a critical role in this because OIRA is the office within OMB that is responsible for carrying out both regulatory and paperwork burden reviews. In carrying out this job, you have a difficult balance. After

all, it is not OIRA's job to revisit the choices we make here in Congress, or to substitute its judgment for the technical and scientific expertise of the agencies to which Congress has delegated administrative responsibilities. At the same time, OIRA must still carry out its role of preventing unnecessary regulatory and paperwork burdens.

Part of OIRA's role here is to take a broader view of the paperwork involved in specific transactions than simply those imposed by a single agency. The Subcommittee on Regulation and Government Information last year, under Senator Kohl's chairmanship, held a hearing to examine all the different paperwork involved in an FHA mortgage application. I have heard complaints from companies that contract with several Federal agencies that each agency has different requirements regarding the collection and reporting of data relating to minority and disadvantaged subcontractors. We need to be more careful about monitoring and, where possible, harmonizing and streamlining multiagency information requests.

I also think it is important for OIRA to take an active role in fulfilling another purpose of the Paperwork Reduction Act, which was "to ensure that automatic data processing, telecommunications, and other information technologies are acquired and used by the Federal Government in a manner which improves service delivery and program management, increases productivity, improves the quality of decision-making, reduces waste and fraud, and wherever practicable and appropriate, reduces the information processing burden for the Federal Government and for persons who provide information to and for the Federal Government." In other words, it is part of OIRA's mission to help us reinvent government.

Finally, OIRA also has an important role in setting statistical policy for the Federal Government. I think this is an extremely important part of OIRA's mandate, particularly as we move towards trying to measure outcomes of Federal programs through implementation of the CFO Act and through measures such as S. 20, the performance measurement bill which we approved earlier this year. Assuring accurate definition and collection of these statistics will be the key to making performance measurement work. Without statistical validity, performance measurement will simply become another game in the policy battles.

I look forward to working with you in the coming years. Again, I welcome you to this Committee.

Chairman GLENN. Thank you very much.

We are grateful this morning to have two introducers here this morning, Congressional Delegate Eleanor Holmes Norton, who was delayed over in the House, I believe with the President's visit over there this morning, and also Deputy Director of OMB Alice Rivlin joins us again here this morning. So we are honored to have both of you.

Ms. Norton, would you lead off?

#### **TESTIMONY OF THE HON. ELEANOR HOLMES NORTON, REPRESENTATIVE IN CONGRESS FROM THE DISTRICT OF COLUMBIA**

Ms. NORTON. Thank you very much, Mr. Chairman.

Judged by their accomplishments, the District of Columbia, is full of stars. Actually, there are two of them at the table this morning, because Alice Rivlin also is here, and you are about to hear from another one of them, Sally Katzen.

Sally Katzen is a deeply experienced and wonderfully accomplished Washingtonian. You are aware of her prior experience in Government in the last Democratic administration. Her career since has been, as it were, one might say in preparation for the Administrator's post at the Office of Information and Regulatory Affairs. It is a very controversial and tough post, and you have an able nominee to fill it.

Sally Katzen has been a partner at Wilmer, Cutler & Pickering. She has chaired the Section on Administrative Law and Regulatory Practice of the American Bar Association. She has been a public

member of the Administrative Conference of the United States. In 1990, she was President of the Federal Communications Bar Association. She has brilliant legal credentials. She was editor-in-chief of the *Michigan Law Review* and served on the U.S. Court of Appeals here.

Mr. Chairman, I am particularly proud also of the fact that Sally Katzen has been chair of the Women's Legal Defense Fund, and in 1992 she was coach of the Capital City Little League team.

Chairman GLENN. You are getting into big-time stuff now. [Laughter.]

Fine. Alice Rivlin.

#### TESTIMONY OF ALICE RIVLIN, DEPUTY DIRECTOR, OFFICE OF MANAGEMENT AND BUDGET

Ms. RIVLIN. Thank you, Mr. Chairman.

Leon Panetta had very much wanted to be here, but he was called away by the President to accompany him up here to Capitol Hill, so I am very happy to bring his greetings to the Committee and to introduce Sally Katzen.

One of the things that Leon Panetta and I knew when we first came into OMB or first were nominated was that one of the most important things we had to do was find the right person for the Office of Information and Regulatory Affairs.

That office, as you have all pointed out, is extremely important. It is an office in which very difficult policy has to be made. Both regulatory policy and information policy involves balancing in a sensible way, the need of the country to regulate bad things and the cost of so doing. Similarly, with information, the need for information, but information must not be collected at excessive cost. So OIRA is extremely important.

I first heard of Sally Katzen from people that she had served with in the Carter administration, particularly from one mutual friend who almost never says anything good about anyone who said this lady is terrific, and I thought, well, we had better talk to her. So I did have a good long talk with Sally Katzen, and I went in to see Leon and I said you're going to like this lady, she is smart, she is sensible, she has impeccable legal credentials, and she does not seem to be the kind of ideological person one way or the other that would make a mess of OIRA.

So he talked to her and he had the same views, and we are just delighted to present Sally Katzen this morning. As Congresswoman Norton has said, she has fine credentials. She went to the right law school.

Senator GLENN. Now, we could debate that a little bit. [Laughter.]

Ms. RIVLIN. That was for Senator Levin.

Senator GLENN. Let's just say I will be open-minded.

Senator LEVIN. She already had my vote, and now I think you jeopardized Senator Glenn's vote.

Chairman GLENN. As Woody Hayes used to say, that stayed up north. [Laughter.]

Ms. RIVLIN. We think she is an ideal candidate to handle the difficult job of heading the Office of Information and Regulatory Affairs.

Thank you.

Chairman GLENN. Thank you very much for both of your introductions. They are very glowing and we appreciate you being here very much.

Ms. Katzen, if you would rise, we have to have sworn testimony this morning. Do you swear that the testimony you are about to give is the truth, the whole truth, and nothing but the truth, so help you God?

Ms. KATZEN. I do.

Chairman GLENN. Thank you.

**TESTIMONY OF SALLY KATZEN, OF THE DISTRICT OF COLUMBIA, TO BE ADMINISTRATOR, OFFICE OF INFORMATION AND REGULATORY AFFAIRS**

Chairman GLENN. We have a custom here that, when people come before us, if they have family members with them, we like to have them introduced also, and maybe you would want to introduce your family members that are with you here this morning. I had the pleasure of meeting them before we started this morning. If you could introduce them, I would appreciate it.

Ms. KATZEN. Thank you, Mr. Chairman.

I am indeed fortunate to have several members of my family with me here today. I would particularly like to introduce my husband Timothy Dyk, who is a lawyer in Washington and has encouraged me in this endeavor, as he has throughout my professional life.

Next to him is our son Abraham Benjamin Dyk, who also has lots of advice for his mom. Then I would also like to introduce my mother Hilda Katzen and my brother and sister-in-law, Robert and Ellen Katzen, who are here from Pittsburgh today.

Chairman GLENN. I didn't have the opportunity to meet you. We will do that later. Thank you very much.

I also have several questions that we are required to ask of every nominee that comes before the Committee, and I will do that now. Is there anything that you are aware of in your background that might present a conflict of interest with the duties of the office to which you have been nominated?

Ms. KATZEN. No, sir. I have filed a letter of recusal with the Office of Government Ethics, setting forth the steps that I would take if I am confirmed, and on the basis of those recusals and divestitures and establishment of a diversified qualified trust, I do not believe that there is any such conflict.

Chairman GLENN. When will all those be executed? Do you know when those will be finalized?

Ms. KATZEN. Within a week to 10 days after I am confirmed. The papers have already been prepared.

Chairman GLENN. Fine. Do you know of any reason, personal or otherwise, that would in any way prevent you from fully and honorable discharging the responsibilities of the office to which you have been nominated?

Ms. KATZEN. No, sir.

Chairman GLENN. If confirmed, do you agree, without reservation, to appear and to testify before any duly constituted Committee of the Congress?

Ms. KATZEN. Yes, sir.

Chairman GLENN. Do you have a statement that you would care to make?

Ms. KATZEN. I have some very brief comments, if I may, because I wanted, as someone who has spent the majority of her life living here and is proud to be a resident of the District, to thank Congresswoman Norton for coming today, and to thank the Deputy Director for her kind words. I look forward to joining what has been a terrific team that she and Director Panetta are putting together.

I also wanted to thank you, Mr. Chairman, and the other members of the Committee and the staff for the number of courtesies that have been extended to me throughout the confirmation process and for which I am very grateful.

Finally, I would like to thank President Clinton for the confidence that he has shown in me in nominating me to be the Administrator of OIRA. As you have all indicated, it has a relatively full plate of subjects before it. It is responsible for a number of interrelated areas, including information resource management, paperwork reduction and review of Federal agency regulations, all of which are important to the Government being able to be responsive to and provide quality service for the public.

I am acutely aware, as all of you have mentioned, that OIRA has been the focus of a great deal of attention in the recent past, much of it highly critical. You have expressed the deeply held concern that OIRA has not been sufficiently aggressive in the area of information resource management, and has been too aggressive in the area of regulatory review.

The controversy that has developed has obscured the quite valuable work and the very legitimate function that OIRA performs. And the challenge now, indeed it is an opportunity, is to learn from the past and to build better relations with the agencies, the Congress and the public, so that OIRA can fulfill all its responsibilities and do so in a fair and balanced way, and in a way that affords greater openness and accountability.

I realize, as you have mentioned, that there is an enormous amount to be done, but I believe that, working together, we can make a difference, and it is for that reason that I wanted to be nominated for this position and was so delighted to be chosen. If confirmed, I hope that I will be able to meet the expectations of the President and of the members of this Committee and the Senate.

Thank you very much.

Chairman GLENN. Thank you very much.

Your office and your position was established by the Paperwork Reduction Act of 1980, to reduce Government paperwork and improve the management of Federal information activities. The importance of this job, it cannot be over-emphasized. The Federal Government is the largest collector, user, disseminator and storer of information in the whole world, and that is what you will be overseeing, that process. Now, that is the statutory job.

What is your understanding of this as to what all is encompassed in that? That is a big open-ended question, but give us your overall view of it.

Ms. KATZEN. Well, as you said, it involves the management of information that the Government collects, generates and disseminates.



nates. It is a process. The Paperwork Reduction Act sets forth a framework for management of this type of information in whatever form it may take, and this is important, because the use of the information for the Government and for the public is terribly important.

No public policy decision and no regulation can be made without adequate, timely, accurate information, and the availability of this information to the public would be a tremendous asset. So when one is thinking about managing and what the PRA does is establish a framework to think through the life cycle of information from its generation, through its analysis and use, and then possibly, where appropriate, dissemination, and the establishment of policy is to achieve fair and balanced process, and in that regard it is very important.

Chairman GLENN. In addition to the statutory mission, OIRA has regulatory review authority under presidential EO, Executive order. Now, that is a little bit different. You state in your answers to the Committee's prehearing questions that your first priority, upon confirmation, will be to oversee the development of a new regulatory review process. That is something that I very, very much support you in.

First, is it your understanding that the Executive orders issued by President Reagan will be rewritten, and what will be your role in that process, if they are to be rewritten?

Ms. KATZEN. One of President Clinton's first acts was to abolish, if you remember, the Competitiveness Council and stated that the existing Executive orders would remain in place pending an Administration review. That review would encompass both the substance of the review, what criteria would be applied, as well as the process that would be employed, the issue of openness and accountability.

My understanding is that OMB and OIRA is a central player in that, that the review has been ongoing under the leadership of the Vice President. I have participated in a number of meetings with various groups from the Chamber of Commerce, the National Association of Manufacturers, Business Round Table, public interest groups, OMB Watch, the Sierra Club and others, meeting with small businesses, meeting with small governmental entities, to receive their view of the way that OIRA should be structured, the way the review process should be developed.

It is our intention, if I am confirmed, to move from the gathering of information stage to the thinking through the options stage and begin to formulate the parameters of a regulatory review process for the new Administration, and I expect to be very actively and intimately involved in that process.

Chairman GLENN. Have you gotten into some of the past problems over there on this Council of Competitiveness and some of the things we got into on that? What lessons do you draw from those past things? Have you gotten any guidance out of reviewing some of that?

Mr. KATZEN. Well, I have not looked at individual regulations, but I have looked at the broader issues of process, and it is clear to me that there is a great concern that there had been enormous selectivity in which regulations to review and at what time. There

was also tremendous concern that the process itself was designed to leave no fingerprints, and that, therefore, no one could quite know what was being done, by whom or when, and the sense of unfairness that almost amounts to arbitrariness was I think quite prevalent. And I think it was for that reason that the structure of the Competitiveness Council was terminated, and the expectation would be that whatever procedure is developed would be one that is more open and more fair.

Chairman GLENN. I would be interested in your thoughts on what are appropriate disclosure requirements. Let me say that regulatory review is necessary, but I think it has to be open. Senator Levin touched on this a few moments ago.

I have taken the legislative approach on disclosure, because other approaches did not succeed, basically, with the past Administration. They set up some other methods, and I just think we need the legislative approach, so that the Administration is less dependent upon who happens to be at the moment in certain positions. Then it is locked into requirements of law that everybody has to follow. It seems to me that is a common sense approach.

We also need to lock in future Administrations to the principles of sunshine in Government, and I want to work with you on that, to insure that regulatory review, however it is structured, is governed by basic disclosure requirements and time limits. I think that is important, too. Would you comment on that?

Mr. KATZEN. Yes, sir. There are a number of efforts in this regard. The work that your Committee has done, as reflected in your bill, is one such effort. The Administrative Conference has studied this issue, the American Bar Association's Section on Administrative Law has studied this issue, and they all call for greater openness than exists now and more accountability, and so I think the objectives are widely shared.

The details of the process are, as always, the devil is in the details, exactly what will be known, to whom and when. The notion that I have operated on is that it should be fair. If information is available to some, then it should be available to all, or it should not be available to anyone. So it is not a question of who do you know or what phone call do you make, but that the procedures themselves be one that have the integrity of the process.

There is a balancing here. As you mentioned in your opening statement, it is fair and right and proper to throw as much open as possible. On the other hand, one would not want to create a whole other agency and lots of opportunities for lobbying and have another round of comments, because that would probably lead at some point to the delay issue, which was that has also plagued the Competitiveness Council and one which you recognized in your question.

So striking the right balance of how much information should come out and when I think is a delicate task and one that is the subject of the ongoing Administration review. I know that it will be thought through, and I know that whatever procedures are ultimately adopted I will insure are faithfully followed.

Chairman GLENN. My time is up.

Senator ROTH.

Senator ROTH. Thank you, Mr. Chairman.

As you mentioned, at least it is my understanding that the Vice President is conducting a study of regulatory review to determine how the two Executive orders should be modified. Could you describe what role you will play in this? Will you be in a position to approve or disapprove the Executive order? And what if you disapprove, who decides?

Ms. KATZEN. When the President announced his intention to nominate me, the very first call I got was someone from the Vice President's office who was interested in talking to me and thinking through how I could be involved prior to my confirmation in the ongoing review process. And it was only after I spoke with him and then spoke with the staff of your Committee to see that I could meet with various groups and begin receiving information and getting input into the process, that we together, the Vice President's office has been the one who sets up the meetings and has conducted them, but I have attended all such meetings.

The deliberations, as such, I expect to be very much like those that are carried out in this Administration, consensus building, a give and take and an exchange of views that will produce agreement that will be acceptable to all concerned.

I have a very keen sense that my views will be afforded some respect, that people that we are working with I think all have mutual respect for one another. Therefore, it is hard for me to sort of envision an instance where we will develop procedures that I will disagree with.

But ultimately, particularly if it takes the form of an Executive order, it would be something that would be signed by the President, and we have seen that this President is clearly a hands-on President, and he, I am sure, will have some significant say in how this should be structured. We would be presenting to him recommendations, and if there is a decision to be made, it will be made by the President.

Senator ROTH. Have any drafts of the proposed Executive orders been shared with this Committee?

Ms. KATZEN. With your Committee?

Senator ROTH. Yes.

Ms. KATZEN. No, although I would say that a lot of the drafts that we have been given by different groups may well have been shared at various stages with the staff. In other words, when we have met with groups, they have said, gee, if you would like our views of how this should look, here is one way of doing it, or if you would like to do it another way, here is another way, and I think that some of those may well have been shared with various members of the staff, but we did not inquire into that.

I would say that one of the issues that has been discussed among our group is the need for this consultation. We are all struck by how much we are learning in the process, and it is our expectation, as we begin to get our thoughts together, that we would want to discuss those further, particularly with the members and staff of this Committee who also have a great interest in this subject and, therefore, would have a tremendous amount to contribute to the process. What form that would take, I don't quite know, but this is a highly consultative process, and I do not see it stopping until the very last minute when some signature is put on the document.

Senator ROTH. If I understand you, at this juncture, there have been no discussions with the members of this Committee or staff as to the proposed content of Executive orders?

Ms. KATZEN. Other than in the most general terms such as we have had today about wanting to have a more open system or wanting to have a fairer system.

Senator ROTH. I have to say I share with you the desire for sunshine. I have to tell you, though, I spent an hour on the Senate floor yesterday asking for information as to how the proposed income tax impacts on the taxpayer information which the Treasury has not been able to give me. So I hope that there will be sunshine throughout this Administration.

One reason why OIRA has been without a politically appointed Administrator for so long is that the Committee has sought concessions regarding the regulatory review process from previous Republican administrations in return for processing the nomination. Now that we have a Democratic administration, I would expect that to change. Can you assure me that no concessions regarding the regulatory review process have been sought with respect to your nomination?

Ms. KATZEN. I can.

Senator ROTH. In your written response to the Committee's questionnaire, you frequently note that President Clinton moved quickly to abolish the Council on Competitiveness. Actually, it is my understanding that council died at noon on Inauguration Day by its own terms. In other words, it was not created by Executive order, but automatically died. Would you disagree with that?

Ms. KATZEN. I haven't looked at the enabling documents that established the council. My understanding was that it was done by some form of memorandum and the new inhabitants of the offices could have continued the process, had they chosen, but I have not looked first-hand and provided any kind of legal analysis. If we should speak of its being terminated, rather than being abolished, I would be happy to make that change and correction.

Senator ROTH. I generally believe that a quantitative cost-benefit analysis has been a useful tool in reviewing certain regulations, not because it is perfect, but it does make one take a hard look at the regulation. I would be concerned, if we had a serious retreat from this approach, which I believe has been the standard since the Ford administration. What is your opinion on this?

Ms. KATZEN. I think you are speaking of a very broadly held view. I noticed that during the debate on the EPA elevation to Cabinet level, there were a number of persons who spoke quite eloquently on the virtue of a cost-benefit analysis being applied to certain regulations in a certain context.

I do not think there is much dispute, as has been said, of the appropriateness of applying some analysis to regulations. Here, as elsewhere, the devil is in the details, what costs, what benefits, how do you quantify them, and those are questions that may lead to some disagreement. But I believe there is a very broad consensus in support of analyzing regulations to see, generally speaking, the costs that they impose and, generally speaking, the benefits that they convey.

Senator ROTH. So that would go beyond merely listing the advantages and disadvantages, as some have suggested?

Ms. KATZEN. I would hope that we would look to the broadest statement of costs, which would be all of the disadvantages, and the broadest statement of the benefits, which would be all of the advantages, market, nonmarket, quantifiable, nonquantifiable, and apply some judgment and some balance. That is what policy is about. And it would not be OIRA who would be doing this.

I mean the agencies who are the ones who are responsible in the first instance for establishing regulations. They have the expertise, they have the experience, and they have the focus. What OIRA performs, as a reviewing agent, is to say have you asked the right questions, have you gone about it in the right way, is there something that you haven't thought about. That is a reviewing function to insure that the costs or disadvantages or the benefits and the advances have all been taken into account.

Senator ROTH. One final question, Mr. Chairman.

How soon after your confirmation would you be available to testify regarding changes to the Paperwork Reduction Act?

Ms. KATZEN. Well, I would be available whenever I was called, as I answered earlier to a previous question. I would hope that we would have a reasonable period of time to establish the parameters of the regulatory review program under the Clinton administration, and even some period of time to see how we are able to implement it, so at that point Congress could determine if there were issues that needed to be resolved in that area, as it looked at the Paperwork Reduction Act. But if you call, I will come.

Senator ROTH. Thank you, Ms. Katzen.

Chairman GLENN. Senator Levin.

Senator LEVIN. If you call, I will come.

Ms. KATZEN. Field of dreams. [Laughter.]

Senator LEVIN. This is not a field of dreams, but it might be a nightmare, as a matter of fact.

Chairman GLENN. Maybe we need a field of dreams at OIRA. That is not bad.

Senator LEVIN. It is as nice image.

I would like to go back to the regulatory review issue, which my colleagues have touched upon. All of us are interested in it, and we have talked about it at some length in the office. You have given a good statement here this morning, I think, as to what your goals are in terms of openness and access and fairness; whatever the rules are, everybody will play by them. You are not sure what those rules will be, but they will be the same for everybody and you will enforce them for everybody. That is a pretty good general statement, I think, as to what the goals should be.

There is a number of specific issues that are involved here, and I just want to go through some of them and ask you if you can give us any specifics as to where your own views are and also whether you think each of these issues would be covered, in any event, by the Executive order.

Should informal discussions before a regulation is submitted for review be made public at some point? In other words, should the informal discussions between OIRA and the agency be made part

of the record? Second, should the fact that a regulation is being reviewed by OIRA be known?

Third, should the public be able to lobby in person, over the phone, in writing? Next, should the public know why changes were made in a regulation, when changes were made? When should the public know these things? Should the public know what comments were received from private parties?

Those are some of the issues that have been either unresolved or resolved without explicitly addressing them and just sort of haphazardly. I am wondering whether you think each of those items that I mentioned will be addressed specifically, as we have tried to get done by regulation and then by legislation? If so, do you have any comments more specifically than you have made? Although the comments that you made are very, very helpful, do you have any more comments on any of those questions?

Ms. KATZEN. I think that each of the items that you mentioned are on the agenda, are subject to the discussions that we are having and, therefore, will be considered. My own sense is that—and this flows in part from the Gramm principles, from the ACUS work, from the ABA work—that one very important line is between having OIRA serve as a consultant-advisor to the agency, intragovernmental communications, and OIRA's relationship with the outside world. You could call them the lobbyists, you could call them the fact providers, you could use any term that you want, interested parties.

One of the lines that has developed that I personally think is a significant distinguishing factor is not using OIRA as a backdoor conduit for getting information into the decision-making process, without having it known.

So that on things like written communications or even oral communications coming from third parties that then go back to the agencies, that should be in the agency's public record, whether it be sent by OIRA back to them or be sent simultaneously, provided simultaneously to the agency, because the agency's rule is going to be subject to judicial review based on the record developed at the agency. And if information comes into OIRA and it is somehow surreptitiously put into the decision-making process without it ever appearing, that rule itself is going to be subject very vulnerable on judicial review.

So my sense is that things coming from third parties should be revealed, disclosed, put on some record in some way. Again, the specifics of this I would leave to the deliberations that are ongoing now, but I think that is one clear-cut.

There is an aspect of what OIRA does that is truly consultative. As I sit here, the analogy of sort of a dissertation of a Ph.D., I mean someone will sit down and write their doctorate and then they will have reviewers who are not as concentrated and focused on having produced this work who can say, hey, did you think of this, or have you ever considered, did you look in this source, or isn't there something else that you might want to do?

It is also possible that you will see a rule and you will look at it and say section 1 and section 6 are inconsistent, which do you want to go, how do you want this? They go, oh, my, yes, well, when we were drafting this, we went back and forth and, yes, it's not

quite the way we want it. Those kinds of advice, those kinds of suggestions, the value from raising those where the agency willingly says, gee, I would like to do it differently, thanks for calling it to my attention, is a very different nature than what has been said to have happened in the past.

Senator LEVIN. Let me interrupt, because my time is running out. That is a very helpful answer, as a matter of fact, and I think it is a very interesting distinction you have drawn.

Do you have a personal feeling as to whether or not the public should have access to OIRA, when it is reviewing a rule more formally? Do you have a personal feeling going in on that?

Ms. KATZEN. I am conflicted.

Senator LEVIN. That is good enough. Next, do you believe that a rule which has been the product of regulatory negotiations should have any kind of presumption going into the OIRA review? If so, if you would give us a real brief answer. If you are not sure, that is fine, let us know briefly what it is.

Ms. KATZEN. I think some things should be done to encourage negotiated rulemaking. I think it is an important thing, because it is one form of consensual based regulation which has an enormous amount to offer the American public. How you would make that benefit, whether you would give it some presumption, I don't really have a clear view, but I think that is something that should be done to send the right signals.

Senator LEVIN. My time is up. I would only urge you to keep in close touch with this Committee during the drafting of this Executive order, because of the experience of our Chairman and others of us who have been deeply involved in regulatory review. Believing that it is appropriate, it is legitimate, that it has got to be done right, that it is only legitimate if it is open. If the public is going to be treated differently, depending on whom you know, it becomes illegitimate. On the other hand, it is very legitimate, if it is a level playing field and if it permits the executive branch to be more accountable for the rules, and if we avoid duplication and waste and excess and burdensome regs as a result of it. So I hope you will keep in close touch.

I wish you could see your family as you testify, by the way, to see the pride that they are taking in you. I don't know that the record—I will translate for the record what the word "kvell" means later, but your mother's particular kvelling on you is an extraordinary site, I must say.

Ms. KATZEN. Thank you very much.

Chairman GLENN. Senator Lieberman.

Senator LIEBERMAN. Thank you, Mr. Chairman.

I hope there is not any conclusions to be drawn, but the first statement I was going to make was going to be about your mother, too. [Laughter.]

She is very devoted and very proud, as she has every right to be.

Ms. Katzen, we have talked a little bit about the National Performance Review Board. Some of us on this Committee are obviously pleased about the creation of the board, but are concerned about what will be done to assure implementation of its recommendations and to assure what happens after the board reports in September.

Senator Roth and Senator Glenn and I each have introduced bills which are in the process, I think it is fair to say, of being blended together, fortunately, which would create an ongoing Government streamlining performance review commission, including a fast-track and up-or-down vote on recommendations, patterned after the Military Base Closing Commission process.

I wonder if you have any thoughts about assuring the implementation of the recommendations of the National Performance Review, particularly as it affects OIRA, after the report is made in September.

Ms. KATZEN. Since the announcement of the President's intention to nominate me, I have been spending most of my time trying to figure out the little world of OIRA, which turns out to be a very large world, and have not been involved with the National Performance Review work.

I have the general impression that it is trying to be very thoughtful and very wide-ranging and then will ultimately come to specific recommendations. I also have the sense that it is not something that is just going to happen on day one, but that it will require some implementation and, obviously, would require coordination and cooperation with Congress.

This is something which the nominee for the Deputy Director of OMB for Management, Mr. Lader I believe has been involved with and would be better able to respond to specific questions about that. My sense is that there is a looking towards a collegial, cooperative relationship at the implementation stage.

Senator LIEBERMAN. I appreciate your answer. Mr. Lader is here. I will not bother to ask him now, but we have talked before and I look forward to working with him on that process. But it is real important to make sure that we set up a process whereby Congress will not allow itself to be gridlocked in implementing some of the change that I believe the board will recommend that will inevitably make some people unhappy, or should make some people unhappy because it has changed.

Let me come back to one last question. We always say here in this Committee, when we deal with OMB, that there is as lot of emphasis on the "B," but not enough on the "M." In the case of OIRA, I think at least in recent times there has been a lot of emphasis on the "R," but not much on the "I."

As you know, as part of its responsibility under the Paperwork Reduction Act, OIRA is in charge of the coordination of Federal statistical and information policy. I wanted to ask you a question about that. One of the items that the GAO highlighted in its transition reports to this Committee was the need to strengthen Federal information systems as a cornerstone of improving management.

As my Subcommittee has sought to examine Government waste this year, it has become clear that, as often as not, inadequately thought-out information systems lead to waste and abuse. Given the Paperwork Reduction Act's purpose of using modern information systems to improve service delivery and program management, do you think there is a role or a need for OIRA to function as what might be called an in-house information system management con-



sultant for Federal agencies who may have less ability to develop this expertise and, therefore, less ability to avoid waste?

Ms. KATZEN. I think that is one of the underlying assumptions of the Paperwork Reduction Act, to provide that kind of consulting and advice. It is important to recognize that the problems are faced first and foremost at the agency level and that OIRA, as strong as it maybe and as effective as it may be and as brilliant as its insights may be, cannot do the job itself and cannot substitute for rational thoughtful processes at the agencies themselves.

GAO did a study recently, I think, which pointed out the knowledge, institutional and political barriers to effective IRM throughout the agencies, in terms of who gets the assignment of being the IRM man or woman, what role they play in the agency, how close or far away they are from the policymakers, what experience they have, and we go from those things which can be corrected in terms of knowledge or training or awareness or sensitivity to things like long-range planning.

One of the problems is that some of the political appointees may have a 2- or 3-year life tenure and are looking for short-term fixes, short-term accomplishments and are not as concerned with what is essentially a long-range problem, how to bring the Government technology and information policies into the modern age.

This is important, because of the changes in technology that are happening almost faster than anyone can develop policies for them. And unless one steps back and say where do we want to be 5, 10, 15 years from now and how do we get there, and there aren't the right incentives in place, some of those are difficult. You have a 1-year budget cycle, which is the result of the way we function, and unless there is some modification to that and Congress allocating money, you are going to be locked until the end of the fiscal year, you have some money left, well, we will buy whatever is around, even if it is not going to be what fits with where you want to be in 5 years.

I am trying to say there is a range of types of issues on which we can provide some insight and we can provide some advice. I think some of the people who are at OIRA that I have met and talked to are quite impressive in their qualifications in this area, but we need a great deal more support. And I think I indicated in response to the written questions that I would look to the Director and the Deputy Director to work with their colleagues in the Cabinet, to impress upon them the importance of focusing some leadership and attention in this area.

Senator LIEBERMAN. Thank you for your answer, which shows clearly that you understand the challenges and the opportunities here, and I look forward to working with you.

Ms. KATZEN. Thank you.

Senator LIEBERMAN. Thank you, Mr. Chairman.

Senator LEVIN [presiding]. Senator Nunn.

#### OPENING STATEMENT OF SENATOR NUNN

Senator NUNN. I will make mine very brief, Mr. Acting Chairman, Senator Levin.

I am very high on the nominee. She comes very well qualified, both with public experience and private sector experience. I think

she has focused on these issues, and she is smart enough not to give complete definitive answers at a confirmation hearing. That is one thing in her corner right there. [Laughter.]

If you answer every one of Senator Levin's questions at a confirmation hearing, it is hopeless. You will not be confirmed. [Laughter.]

So I think you have displayed great agility and diplomacy, as well as wisdom.

I would also say that I have had a chance to talk with Ms. Katzen, and I know she is going to concentrate very heavily on her responsibilities. I have also, of course, asked her to take a close look at S. 560, which is the codification of many of these debates we are talking about, and we are going to be pushing that this year. There is opposition. There are different feelings on this Committee, but I think all of us would be amenable to hearing your views on this proposal and any changes you recommend or any points you emphasize, as we move forward with this legislation.

It is my intention—and I think I can speak for all the cosponsors of this legislation—to get a vote on it this year, either on the floor or hopefully here in the Committee. Senator Glenn and I have talked about it, and I know that he is ready to try to come to grips with it, also. So we will certainly give you every opportunity to have a chance to get on top of this and give us your views before we do so. We would like to have your views and the Administration's.

Mr. Chairman, I was just talking about S. 560. I hope to get a vote on it sometime this year, and I was talking with Ms. Katzen about it, and we would welcome her views before we do that, either in Committee or on the floor.

But I am proud to support the nomination. I think she will do an excellent job, and it is an increasingly important position.

Chairman GLENN [presiding]. Thank you, Senator Nunn.

What I had planned to do was—I have proposals, Sam has proposals, Senator Bumpers has worked with it, there are other cosponsors and so on—what I would like to do is sit down and get you involved as soon as you are in place and talk over some of these things and try and get something we agree upon, so that we can make this whole thing work.

Senator LEVIN. A little reg neg here.

Ms. KATZEN. Big reg neg. [Laughter.]

Chairman GLENN. That is right, so we can work together on it and look forward to that.

Senator NUNN. Mr. Chairman, I would like to put a detailed statement in the record.

Chairman GLENN. Without objection, that will be included.

#### PREPARED STATEMENT OF SENATOR NUNN

Mr. Chairman, I, too, would like to extend my warm welcome to Sally Katzen and her family.

President Clinton has sent to this Committee a well-qualified nominee to be Administrator of the Office of Information and Regulatory Affairs (OIRA). Sally Katzen's professional experiences, in private practice and governmental service, give her a practical perspective on the very important responsibilities exercised by OIRA under the Paperwork Reduction Act, as well as various Executive Orders.

From her private practice experience, she understands the burdens placed upon the public by government regulations and paperwork. From her service in the Exec-

utive Office of the President during the Carter Administration, she knows the benefits to the President of a centralized regulatory management process. She is equally understanding of the difficulties of coordinating and restraining the regulatory proclivities of the various Executive agencies.

When Ms. Katzen is confirmed, as I am confident that she will be, she will be in the thick of key Administration decisions that can go a long way to attaining President Clinton's commitment to reduce the burdens which the government imposes on the public. On January 21, Day Two of the Clinton Administration, the President announced that he was maintaining the existing regulatory review process, while subjecting it to a thorough review.

Vice President Gore is taking the lead in this review effort, just as he is with the National Performance Review. OMB Director Leon Panetta also pledged, during his confirmation hearing, to take an active role. It is my expectation that the OIRA Administrator will also play a major role, as I discussed with Ms. Katzen last week.

The Presidency needs a strong regulatory review process within the Executive Office of the President. With unambiguous authority, steadfast support from the President's senior advisors, and a tough but thoughtful Administrator, OIRA can and should continue to perform this function for President Clinton.

As part of the Administration's effort to review the existing regulatory review process, Ms. Katzen will have to confront the thorny issue of public disclosure. In many ways, this issue has been the stumbling block to the reauthorization of appropriations for OIRA and contributed to OIRA being without a Presidentially-appointed and Senate-confirmed Administrator since November of 1989.

As you know, there are widely divergent opinions regarding how much is the right amount of public disclosure of communications received by those conducting regulatory reviews, from the public and from others in government. Questions abound regarding what is to be disclosed and when. For me, the public disclosure standards written into the Paperwork Reduction Act by our former colleague from Florida, Lawton Chiles, are certainly a good place to begin.

Representative Jack Brooks, then Chairman of the House Governmental Operations Committee, used to call Senator Chiles "the Sunshine Senator from the Sunshine State" for good reason. The Paperwork Reduction Act's statutory disclosure requirements were administratively extended to OIRA's regulatory review functions, and broadened, in 1986 at the behest of this Committee, with the leadership of Senator Levin. Given Ms. Katzen's experiences in both government and the private sector, she will be in a strong position to help shape standards that are reasonable and workable in practical terms.

Ms. Katzen, once you have your arms around the OIRA operation, I will be looking to you to press for an Administration position regarding S. 560, the Paperwork Reduction Act of 1993, which I introduced on March 10, with 25 bipartisan cosponsors. Senator Bumpers, Chairman of the Small Business Committee, is the principal Democratic cosponsor. Senator Danforth, who was the principal cosponsor of the Chiles' bill that became the Paperwork Reduction Act of 1980, is the principal Republican cosponsor. Several members of this Committee are original cosponsors of S. 560.

Our bill enjoys strong support within the business community, especially the small business community, and many others that labor under the burdens of federally-sponsored paperwork.

For now, let me again say that I look forward to being able to work with you as Administrator of the Office of Information and Regulatory Affairs.

Chairman GLENN. GAO has repeatedly warned Congress about the Government's mismanagement of information technology. As I indicated in my opening statement, we have about \$20 billion a year that is being spent on information technology.

In the recent information management transition report, GAO also said that "better leadership and strategic planning" is needed, because "many agencies are not using information technology strategically to simplify and streamline their organization, management and business processes, as well as to improve service to the public."

That is a big order. Do you have any ideas or do you have any specifics as to what you plan to do to simplify and streamline some of these things? We have \$20 billion a year going into this and we don't really make adequate use of it. A lot of it is stored, and a lot

of it is not necessary in the first place. This is an enormous task. How do you approach it?

Ms. KATZEN. I think it is an enormous task and it will call on the participation and cooperation of all of us. And by all of us, I mean the agencies who have to deal with this on a front-line basis, the Administration and Congress who have to think about how best to have funding for this in a way that enhances long-range planning, rather than short-term fixes, personnel.

I had indicated, I think in response to Senator Lieberman's question, the importance of bringing together the Cabinet members and under secretaries to impress upon them the importance of effective IRM within their agencies to serve their needs, and that absent leadership at the agencies, I can do all the consulting and advising and management and policy-making under the sun, and I will only have a limited effect, but if we can bring people together and share the objectives.

We have the budget tool available of reviewing proposals and OIRA works with the "B" side of OMB in that regard, of looking at that to make sure that the money is well spent. But the whole thing I think has to be put in context and has to be looked at more than just what are we going to do this year. It is a long-range problem and it needs a thoughtful, strategic—and I think that is the word that the GAO report was using—a strategic approach that should be focused on this. And the time is ripe now, because the technology is developing so effectively to be able to manage enormous amounts of information in a very cost-effective way. And if we have the right framework for it, it can be a valuable asset for all concerned.

Chairman GLENN. I am not sure how you do this. You get a request from an agency that may be that thick and it may be 500 pages or so, and it wants you to approve some information request that is going to go out nationwide, and maybe it comes from the Department of Agriculture. Well, OK, I guess they need that information. Then right along behind it comes another one from the Department of the Interior, going out to many of the same people, and so on. How on earth do you coordinate those things?

I can tell you, looking at it from the user-end of things—and I ran for reelection last year, but that is nothing magic, except that you particularly hear all the gripes during an election year. I heard complaints at every single stop, I think, around Ohio all last year about the forms and the regs and how small business is being inundated. People complain about the multiple requests for information and so on, small businesses having to hire people just to fill out all the forms and so on.

Do you computer this, or do you do it? There has got to be some way to manage this thing, so that we are not inundating people in paperwork, and that is what the PRA was supposed to address.

Ms. KATZEN. Well, I think there are various ways of looking at it. On the information collection front, you have first the review of the information that is being requested, and that is sort of form-by-form review, and it is important, because if the form is approved, it is part of what is the imbedded existing paperwork requirements.

We don't have a large staff, and one of the problems is that people are stretched thin. One of the virtues is that the same person who is looking at Agriculture may have also just looked at the Interior and will have a sense. We have jurisdiction across all of the agencies, so there is some familiarity within the office itself.

In addition, there has been a lot of talk about and I hope some action on the FLS, the Federal Locator System, which is going to establish, at least in its most general sense, a directory of what information is available, who is asking for what and who is getting it and how are they going to use it.

And to the extent that we can provide advice and assistance to one agency in getting information that can be used ultimately by another agency—the example that impressed me most recently was the Veterans' Administration. Almost anyone going into the service is going to end up being a veteran, so one would think that the information you get coming into the armed services, information about your service period would all be formatted or used or set up in a way that would be providing useful information for the Veterans' Administration, which is going to have the responsibility for these same people at some further point?

There isn't that kind of coordination, but I think some thoughtfulness about organizing will mean that you don't have to fill out your forms all over again. I would say as an individual who recently has filled out a large number of forms to qualify for this position, I am wholly sympathetic to the complaint about forms. I kept my cool I think most of the time, but I do understand the concern.

Chairman GLENN. Maybe we need to start at home right here.

Ms. KATZEN. It would help.

Chairman GLENN. Do you believe that OIRA should have the authority to review third-party paperwork requirements? Let me give an example. It would be like the OSHA hazards communication standard, which the Supreme Court said in *Dole v. United Steelworkers* is not covered by the Paperwork Reduction Act. Should it be?

Ms. KATZEN. Well, the Supreme Court was quite clear that third-party disclosures were not covered by the Paperwork Reduction Act. That is a decision, as the highest court in the land, that will, therefore, be entitled to total deference and compliance.

It is a statutory interpretation, and I know that there are some who believe that the Act was intended to cover that. I believe that is an issue for Congress itself to resolve. Congress knows its intent. If its intent is to cover third parties, then it can make that intent manifest. If it is not intended to do so, then the law of the land does not.

I should add that there is a District of Columbia Court of Appeals case that kind of fuzzed up the area a bit, because it talked about third-party disclosures that are also kept for use by the Government, and that has led to some uncertainty among agencies.

And there is as GAO study, I believe, of inconsistent practices among the agencies, and GAO I believe had recommended that some guidance be given by OIRA as to what is covered and what is not. If Congress wants to clarify the area, that would obviate the need for such guidance. In the absence of such clarification by Con-

gress, OIRA probably should look to see that if it can be of assistance in this area, and I would look to do that.

Chairman GLENN. You are correct. I had asked GAO to look at agency practices, in light of that *Dole* decision, and they found inconsistency. They recommended that OIRA issue guidance, and I think you ought to consider this. But I also think, as you say, it is time we ought to look at it here. Senator Nunn's bill gets into that a little bit, and I think we need to talk about that and what will work and what will not work.

Back to your staff for just a moment, you mentioned small staff. In this area of information resources management, do you feel you have the expertise on your staff over there to deal with that? Because that is going to be a very major problem.

Ms. KATZEN. Pending confirmation, I have not wanted to get too involved in the relations within the staff. I have met with each of the members of the staff and have a preliminary judgment, and I would say that, particularly in the information area, I was very impressed by a number of the people with whom I worked who I think bring an enormous amount of expertise and experience to the area. But any decisions about organization within OIRA or allocation of resources within OIRA, I would wait until after confirmation and I have some hands-on experience to evaluate it in good management style.

Chairman GLENN. What are your personal views on regulatory review of independent regulatory agency rulemaking? I understand that when you were involved with the American Bar Association and looked at this issue, that ABA recommended to cover the independents. The Executive order that was issued under President Reagan, I don't think it covers like FCC and FTC and so on. What are your views on that?

Ms. KATZEN. The existing Executive orders do not cover the independent agencies for review of regulations. Both ACUS and the at-law section of ABA gave their view that there was no particular reason why those agencies should not be included.

There are two aspects of the review under the current Executive orders. One is the 12498 planning function, and the other is the 12291 cost-benefit review function. As to the planning function, the Constitution provides that the President can call for written reports from anybody with respect to the matters before them, and I think that it is a much more difficult argument, if it can be made at all, that independent agencies, therefore, should be treated differently from executive branch agencies for the planning function.

On the other hand, we could get into Humphries Executor and all the other cases that talk about the difference between the presidential oversight of independent agencies and the right to hire and fire chairmen of independent agencies as opposed to executive branch agencies, and I think there may be some different arguments there.

I was at ACUS and with the at-law section on the floor of the house of delegates when they adopted these recommendations that call into question whether there should be different treatment, and I personally believe that in some instances it is a fairly close case.

Chairman GLENN. We had a hearing last year on the OSHA rules, and OIRA came up with a "risk-risk" analysis. Now, I don't

know if you have had a chance to go into that or not or have an opinion on it, but the OIRA logic at that time in the testimony that we had here in this room, it may be fine for the academic towers to debate something like this, but I thought in the real live workplace here that it wasn't necessarily logic, it was rather illogic.

It was that OSHA worker health standards would somehow end up harming, instead of protecting worker health. The theory was that the compliance costs would be passed on to workers who would then have lower wages, and other statistics show that if you have low wages, you have worse health, because poor people have worse health than rich people, and that was the logic that was put forward.

Now, I don't know how ingrained that view is over in your staff over there, nor what you think of it. In your prehearing answers, you suggest that risk-risk has some credibility in the economics literature, but I would hope you would review our hearing record and also read GAO's July 1992 report on the subject. I think the manner of applying that kind of theory to regulatory analysis, I don't know that it is supported by the literature and I think it is something you ought to look at very carefully, so we have the best credibility over there in your shop we possibly can have.

Ms. KATZEN. I think you have made an important distinction between what some theory is, as a conceptual matter, and how it may be applied. I have not looked at the particular instance, although I was aware that GAO I think had done a report on that particular OSHA rulemaking. But I have tried not to get involved in individual regs that are pending now or what has happened in the past. I would like to look to the future.

The concept, as a conceptual matter, of the nature of risk-risk, as I understand it, is to consider what the unintended consequences may be. Perhaps a less controversial issue would be the asbestos cleaning out. I mean it is one thing to say you want to get the asbestos out of the schoolhouses, so the children do not breathe it, but one would want to look into whether, when one tears out the stuff, you end up loosening it into the air, so that the kids end up breathing more of it and, therefore, you would want to take other steps along the way so that your rule ends up achieving the objectives.

I mean that is the ultimate process of regulation, is to achieve a particular objective. In the broadest sense, to consider unintended consequences makes sense. How it is applied may be pernicious and it may be wrongly motivated, it may just be wrong. I cannot speak to that, but I would be happy to work with you and your staff in making sure that the words don't trip us up, that we can work together on the concepts.

Chairman GLENN. You have risk analysis done when these things come to you for your review and a cost-benefit ratio which is required, and it seems to me that—

Ms. KATZEN. Except in some areas where it is precluded. The Delaney principle, the Delaney amendment says that in the OSHA area you are not supposed to take into account the costs. You can do a cost-benefit analysis to see what it does cost, but you are not supposed to take that into account. So there are deferent statutes

that apply and, therefore, different rules which would pertain, I would imagine, in the individual circumstances.

Chairman GLENN. Information access—in our new electronic age, information is taking on new forms, new values, is providing new challenges to agency managers. There is a lot of talk about hooking agencies into computer networks and across networks, and so on, and sending Government information directly to schools and libraries.

I would like to hear your thoughts on maintaining public access to public information in this electronic age. How do we go about meeting the Government's dissemination obligations in an environment where new money is scarce? No matter how much we might want to send this to every library in the country, we know we cannot do that. But we want to make information available, yet we don't want to inundate people with all the mass of statistics at the Federal level. What balance do we hit on that?

Ms. KATZEN. I think you have got it exactly right. There is a balance here that is difficult to articulate in the abstract. The depository libraries have been for years a very important outlet for dissemination of Government information to the public.

We have now, with the advent of electronic information gathering and information dissemination, possibilities that I think should open our eyes to the various ways we could go about doing this, whether it be an on-line system—and I know there is a bill pending now to put the Federal Register and the Congressional Record, I guess through the GPO Windows Project, to make that available on-line, so that people can access that kind of information.

I sense that this may be a time either to do a variety of experimentation, try doing some stuff one way and try doing some other things a different way. There is a community of vendors. There is a community of private information sources who want to add value and then resell some of this information. There are the depository libraries that simply want to make it available.

And there is a whole host of other people who can have access to this information in a variety of ways, and it may be appropriate to try and watch how some of these systems work and make some judgments about the most efficacious way of proceeding. But we are on a cutting edge right now where the technology will enable us to do a lot more, limited resources being an obvious constraint.

Chairman GLENN. The Vice President, in particular, has expressed his interest in this information super highway, as he has termed it, and it is a catchy term and we all want to see it happen. Just like the term seems to indicate, we want information to flow to everybody.

We sometimes hear of agencies exercising proprietary-like controls on information access. We have even seen Congress, in the case of the Federal Maritime Commission, turn public information into a revenue source. I don't know how far we go with that, either. I would like to hear your thoughts on maintaining public access. Do you think this idea of selling Government information is something we ought to shy away from?

Ms. KATZEN. There are two issues. One is the dissemination, and I am not sure if the reference that you had was to a situation where there may be some legitimate basis for keeping some things



confidential. We had the Privacy Act, we have other confidential information. The gathering of statistics generally normally go out with these big capital letters saying "this is for statistical purposes only and will not be revealed." We don't want to go back on our promises and then reveal the information, since it is intended for aggregate use only. So there may be certain instances where all information should not just be made available willy-nilly to everybody, and we have to worry about those concerns.

The issue of selling or making it revenue producing, I think that is a tougher issue. We are faced with needs to raise revenues, I agree, but in some sense it seems that the cost of the dissemination should be no more than the cost of the dissemination, as it is under FOIA, the Freedom of Information Act. The basic notion that has governed now—and I happen to agree with it personally—is that you can charge someone for the cost of retrieving the information under FOIA, and not to make a profit and not to lose any money. Finding that line is not easy, but that I think should be the objective.

Chairman GLENN. Senator Levin.

Senator LEVIN. Thank you, Mr. Chairman.

Back to the regulatory review first. You are familiar with the 1986 Wendy Gramm memorandum?

Ms. KATZEN. Yes, sir.

Senator LEVIN. Is that still in effect, do you know?

Ms. KATZEN. It is.

Senator LEVIN. We have talked a lot about the regulatory review issues and how and when they will be resolved. Do you prefer an Executive order to resolve the issues that were discussed here this morning, or do you believe that legislation might be the better way to go? Do you know what issues I am referring to, the types that we listed before?

Ms. KATZEN. Yes. I suspect that my personal preference would be more toward an Executive order, because I believe that one learns from experience and one can modify them and make adjustments more readily than trying to get amendments to statutes. Therefore, ordinarily, the less formal means may be the more desirable means. An Executive order requires the President's signature, and I cannot speak for him, if that is the way he would want it to be.

Senator LEVIN. Do you expect that we would have resolution of these issues on regulatory review by the fall?

Ms. KATZEN. I hope so. I fervently hope so.

Senator LEVIN. If we don't have them—

Ms. KATZEN. By resolution, do you mean our recommendations and the President's decision?

Senator LEVIN. Yes.

Ms. KATZEN. Yes.

Senator LEVIN. Yes, an Executive order.

Ms. KATZEN. Yes.

Senator LEVIN. If we don't have them by the fall, do you think it would be unreasonable for us to start considering legislation again in order to resolve them? Would that be a reasonable timeframe?

Ms. KATZEN. I think that would be a reasonable timeframe. I hope that we do not get to that point.

Senator LEVIN. I hope so, too, but we have had them unresolved for so long, that we do want to move on them now.

Ms. KATZEN. I understand.

Chairman GLENN. Provided we get her approved very rapidly.

Senator LEVIN. The Chairman got into the risk-risk analysis. Those words "risk-risk analysis" have been used in different ways, and I want to just go through some of the ways that they have been used or that label or that title has been used. First, it is the way you talk about the unintended consequences, where the removal of the asbestos creates a risk.

Ms. KATZEN. Yes.

Senator LEVIN. Leaving it in creates a risk. Therefore, we have got a risk, either way. We will call that risk-risk No. 1.

There is another way that word has been used, which is let us say there is radiation at a nuclear plant, there is a risk of working there, because you will be exposed to more radiation. You will be exposed to some radiation when you work there. That is a risk. That risk, under some approaches, would be compared to how much radiation one gets walking outdoors, or other risks like driving a car. There is a risk-risk there. The cost of removal of the radiation or reduction of the radiation in the workplace, compared to ordinary risks to which we are all exposed, that is another kind of risk-risk, a very different kind of risk-risk analysis. I would think both of those, frankly, are legitimate kinds of risk-risk analysis.

The kind that I think the Chairman was referring to in his description is what I am going to use in a slightly different way. I am going to try it in a different way, because I would like to see whether or not you don't agree that what I am going to describe is not a legitimate analysis. See if we can pin you down on this one, now that Senator Nunn is gone.

The Administration last year used this approach which the Chairman was describing. You breathe coal dust in a coal mine. Well, that is bad, but you get paid more for doing it. The Administration last year said what you have got to do is look at that extra pay for breathing coal dust and then figure out that, because you are getting extra pay, you are going to be able to take more vacations, and because you take more vacations, you are going to have less stress, and because you have less stress, you are going to live longer. Therefore, breathing coal dust will add to your life expectancy.

That is the absurdity that they took this thing to last year. I hope it sounds wacky. I intended it to. That also was called risk-risk. I think they reversed it at the end, to call that health-health, by the way. Whatever it is, would you agree that that is not the kind of cost-benefit that we should be looking at, so that we end up with the result that the greater the risk you take, since you might be paid more, therefore, the better off you are? Have you heard about that kind of analysis?

Ms. KATZEN. I have not. When I refer to risk-risk, it is in the sense that you were referring to, the first or second, as you called them, and those make sense to me.

Based on just what you have said, I have a little trouble accepting the analysis. On the other hand, I did not look at what they

have done and I don't want to condemn, without having looked at it first.

Senator LEVIN. Not based on my description.

Ms. KATZEN. Based on your description, it does not sound like the kind of risk-risk that I have been familiar with and that I am comfortable with, I can say that.

Senator LEVIN. If you change your mind on that——

Ms. KATZEN. I will let you know.

Senator LEVIN [continuing]. If you become comfortable, let us know, would you?

Do you believe there is as need for regulatory review beyond and above OIRA?

Ms. KATZEN. I think that the vast majority of the rules that OIRA would review would be done without any need for further review, as you use the term, that it is basically a professional review in the sense of I described earlier, of asking the right questions, seeing that the agency has done the right thing.

I, at the same time, would have to acknowledge, given life in this city, that there are going to be a handful of cases each year in which you are going to have two conflicting views, and it may not be OIRA and the agency. It may be two agencies who are moving in different directions, conflicting directions, and OIRA would see this happening and say, look, we can't do this, you can't be going A and B at the same time.

If I am dealing with two Cabinet officers who have been locked into the positions that their department has taken and they come to me and say I am doing this and I am doing this, it would be resolved, I think ultimately, it would have to go above the OIRA level, and I would consult with the deputy directors and Director Panetta, and if it were not able to be worked out at that level, I cannot help but think, given the way my experience in this town, is that at some point the President himself may have to resolve disputes among members of his Cabinet, and that is the appropriate place where such action would take place, for accountability purposes.

Senator LEVIN. Thank you. Good luck.

Chairman GLENN. I just had one further area. I guess I am still impressed with what I have run into with people very, very unhappy, I mean really unhappy about the regulations that are out there now just inundating people, and they have that feeling.

I don't know whether there is a way that we can go back and re-review some of those things. Heaven knows, that sounds awful to even think of, and do it openly and fairly. But there has to be some way to give some relief to the complaints that people have out there, because they are genuine and they will give you chapter and verse examples of them and they will show you the forms that they got from various Government agencies and so on, particularly small business people. Because they don't have someone they can refer it to without hiring somebody, and most of the small business people don't have that luxury of just hiring more people, and so they have to sit and do that themselves at night at home. They are very upset about this. It has been an inundation that has just gone up tremendously over the last few years. I don't know how we get back into that, but I would be interested in your comments on it.

Some of the EPA, some of the OSHA things, wetlands, I am sure you have gotten into some of that discussion. That is a whole other area that really needs to be looked at very carefully. Once these rules and regulations are out there, I don't know how we go back and re-review, because we know what a problem it is to even get things out there to begin with.

Ms. KATZEN. That is a very difficult problem. The previous Administration tried a deregulation, clearing out the underbrush, regulatory review process of existing regs, which I gather the consensus is was not a wholly successful or productive effort. It was likened in one instance to saying you have got a closet full of clothes, go look and see if you haven't worn some suits for the last 4 or 5 years, and if you haven't worn one for the last 4 or 5 years, you are probably not going to wear them, get them out of your closet and we will get rid of some regulations.

I think that is trivializing it, and I think what you are referring to is what happens when you just have one after the other after the other well-meaning regulations, any of which makes sense, but the total amount is just too much.

I think it is possible that one could look at a sector or an industry or a type of business entity or unit, and maybe small governments, as well as small businesses, that are burdened by these, and so some sort of analysis. It seems to me it would necessarily require the cooperation of Congress, because much of the regulations emanate ultimately from statutes that the Congress has passed, and there may be some requirement to bring Congress in and to look through a particular area, maybe do a pilot project and say let's just look at this one area, what we have wrought, and do we like it. If not, what do we want to do about it?

I would hope that a Committee such as yours, which is a process committee in its broadest sense, rather than worrying about a particular substantive area, would be able to act as a broker in some way of bringing together some of the important players who can shed some light on this. Those are the kinds of thoughts that I have had at this preliminary stage, and I hope that I will have greater enlightening, once I am on the job and have some better ideas to work with. But I would hope that that kind of thing might be fruitful.

Chairman GLENN. I have been searching around trying to get some ideas on how to address this. The only thing I had thought of and haven't implemented yet that might be useful would be GAO, as the investigative arm here, has some people and they get into these things and look at them. I had thought about asking them not just to look at our rules and regulations, are there too many—we know there are—but to take, as you say, to focus on one particular area, whether it is an area of particular complaint, like wetlands or whatever, and follow the thing through from how the original legislation was passed here, what the legislative history was, how the rules and regulations writers went at it over there, and how OMB passed it, and there it is out there now as rules and regulations, and see where we went wrong or what was right and was everything necessary, and use sort of a case study to see—and then maybe at that point we find things really are fouled up and maybe we have to bring it back where it started, back here in

Washington and we have to put something in to pass it to undo something that has gone to excess.

I don't know, I hate to think of doing that back here, also, to putting us back into the rules and regulations review business. But there has to be some way to approach this, because people feel inundated out there and they really are. Some of the examples that people give you are just ridiculous.

Thank you very much for your patience this morning. There may be some additional questions for you. I know Congressman Sawyer has submitted some for us and I hope you will respond to those. Our Committee record will be kept open in order for members of the Committee who are not here this morning to have the opportunity to submit additional written questions. I would appreciate your prompt response to any such requests.

We hope to get you through and approved at the earliest possible date. We need you over there doing business.

Ms. KATZEN. Thank you very much, Mr. Chairman.

Chairman GLENN. Thank you very much.

The Committee will stand in recess.

[Whereupon, at 10:41 a.m., the Committee was adjourned.]



# APPENDIX

## BIOGRAPHICAL AND FINANCIAL INFORMATION REQUESTED OF NOMINEES

### A. BIOGRAPHICAL INFORMATION

1. Name: (Include any former names used.)  
Sally Katzen  
Sally Katzen Dye
2. Position to which nominated:  
Administrator—Office of Information and Regulatory Affairs, Office of Management and Budget
3. Date of nomination:  
April 19, 1993
4. Address: (List current place of residence and office addresses.)  
Residence—4638 30th Street, NW, Washington, DC 20008  
Office—2445 M Street, NW, Washington, DC 20037
5. Date and place of birth:  
November 22, 1942  
Pittsburgh, Pennsylvania
6. Marital status: (Include maiden name of wife or husband's name.)  
Married to Timothy B. Dye
7. Names and ages of children:  
Child: Abraham B. Dye—11 years old  
Stepdaughters: Caitlin Shirer Palacios—26 years old  
Dierdre Lawrence Dye—29 years old
8. Education: List secondary and higher education institutions, dates attended, degree received and dates degree granted.  
Taylor Alderdice High School 1954–1960; diploma (June 1960)  
Smith College—1960–1964; B.A., magna cum laude (May 1964)  
University of Michigan Law School—1964–1967; J.D., magna cum laude (May 1967)
9. Employment record: List all jobs held since college, including the title or description of job, name of employer, location of work, and dates of employment. (Please use separate attachment, if necessary.)  
Intern, Civil Rights Division, Department of Justice, Washington, DC, May 1965–Aug. 1965  
Clerk for Judge J. Skelly Wright, U.S. Court of Appeals for the District of Columbia Circuit, Washington, DC, Aug. 1967–July 1968  
Associate/Partner (as of 1/1/75), Wilmer, Cutler & Pickering, 900 17th Street, NW, 1666 K Street, NW, Washington, DC, Aug. 1968–March 1979  
General Counsel/Deputy Director for Program Policy (as of October 1980), Council on Wage and Price Stability, Executive Office of the President, Washington, DC, March 1979–Jan. 1981  
Partner, Wilmer, Cutler & Pickering, 1666 K Street, NW, 2445 M Street, NW, Washington, DC, March 1981–present  
Adjunct Professor, Georgetown Law Center, Washington, DC, Spring term 1986, Fall term 1990, Fall term 1992
10. Military Service: List any military service, including date, rank, and type of discharge.  
None
11. Government experience: List any advisory, consultative, honorary or other part-time service or positions with Federal, State, or local governments, other than those listed above.  
Public Member, Administrative Conference of the U.S.—1988–Present

Member, Commission on the Bicentennial of the U.S. Constitution, U.S. Court of Appeals for the D.C. Circuit, 1987–1990

Member, Judicial Conference of the District of Columbia Circuit—1969–1981; 1983–1992

12. Previous Appointments: Prior to this appointment, have you ever been nominated for a position requiring confirmation by the Senate? If so, please list each such position, including the date of nomination, Senate confirmation, and Committee hearing, if any.

None

13. Business relationships: List all positions held as an officer, director, trustee, partner, proprietor, agent, representative, or consultant of any corporation, company, firm, partnership, or other business enterprise, educational or other institution.

Partner, Wilmer, Cutler & Pickering

Limited Partner, Hempstead Village Associates

Limited Partner, Urban Village Associates

Limited Partner, Stone 1982

Limited Partner, Farragut Investments

Limited Partner, Sheraton Potomac

Member, Committee of Visitors—University of Michigan Law School

In addition, I have served as an attorney/agent/representative/consultant for business clients of Wilmer, Cutler & Pickering. My primary clients for the last two years have been: Capital Cities/ABC; Communications Satellite Corporation; Community TV Foundation of South Florida; Federal National Mortgage Association; Federal Home Loan Bank of San Francisco; IMAX Systems Corporation; International Microwave Power Institute; Lewis & Roca (Council of Community of Blood Centers); National Public Radio; Seattle Public Schools; Swiss Bankers Association; Trans-Alaska Pipeline Liability Fund; and U S WEST.

14. Memberships: List all memberships and offices held in professional, business, fraternal, scholarly, civic, public, charitable and other organizations.

American Bar Association

Member, since 1976

Member, House of Delegates

Chair, Section of Administrative Law and Regulatory Practice

Chair, Standing Committee on National Conference Groups

Member, Governing Committee, Forum Committee on Communications

Member, Committee on Legal Drafting

Member, ABA Fellows

Federal Communications Bar Association

Member, since 1974

Chair, Committee on Cooperation with Review Board and Administrative

Law Judges

Executive Committee

President

Chair, Committee on Nominations

DC Bar Association

Women's Bar Association

Member, Judicial Nominations Committee

Federal City Club

Women's National Democratic Club

Forest Hills Citizens Association

Friends of the Law Library of Congress

Member, Board of Directors

Pettyman Leventhal American Inn of Court

Executive Committee

Counselor

Smith College Club of Washington

President, Jr. Smith Club

Smith College Alumnae Association

University of Michigan Law School Club of Washington

University of Michigan Law School Alumni Association

Women's Legal Defense Fund

Advisory Committee

Steering Committee

President

National Women's Law Center

Temple Sinai



## Memberships through contributions:

ACLU  
 Castle Hill for the Arts  
 Children's Defense Fund  
 Friends of the Kennedy Center  
 Friends of Washington Opera  
 Friends of Metropolitan Museum of Arts  
 Greenpeace  
 Hadassah  
 Land and Water Fund  
 Truro Conservation Trust  
 Truro Historical Society  
 WETA  
 WAMU

There may be other organizations to which I have contributed either time or money during the past 25 years that I cannot now recall.

## 15. Political affiliations and activities:

(a) List all offices with a political party which you have held or any public office for which you have been a candidate.

None

(b) List all memberships and offices held in and services rendered to all political parties or election committees during the last 10 years.

During 1992, I appeared as a spokesperson for the Clinton campaign at a program sponsored by the ABA Section of Administrative Law and Regulatory Practice, and I did fundraising/advisory work for Jane Harman for Congress.

(c) Itemize all political contributions to any individual, campaign organization, political party, political action committee, or similar entity of \$50 or more for the past 5 years.

*1993 to date*

Emily's List .....	\$ 100
Gloria Dell for Senate .....	50
Mary Sue Terry .....	100

*1992*

Clinton for President .....	\$ 500
Tsongas for President .....	500
Jane Harman .....	1,000
Jane Harman .....	1,000
Lita Cohen .....	100
Carol Mosely Braun .....	150
Lynn Yaekel .....	500
John Rauh for Senate .....	100
DNC Victory .....	1,000
Democ. Sen. Campaign Comm. ....	800
Democ. Sen. Campaign Comm. ....	700
Barbara Boxer .....	150
Kennedy for Senate .....	500

*1991*

Clinton for President .....	\$ 500
Senator John Kerry .....	50
Harman for Congress .....	500
Synar for Congress .....	200
Carper for Governor .....	50

*1990*

Tierney for Congress .....	\$ 100
Jamie Kilbrith for AG .....	500
Simon for Senate .....	500
Carper for Congress .....	500
Doug Barnard Committee .....	200
Senator John Kerry .....	100
Kastenmeier .....	250

*1989*

Senator John Kerry .....	\$ 50
Sharon Pratt Dixon .....	200

1988

Dukakis for President .....	\$1,000
Dukakis Compliance Fund .....	1,000

There may be other contributions of modest amounts that do not appear in my records.

16. Honors and awards: List all scholarships, fellowships, honorary degrees, honorary society memberships, military medals and any other special recognitions for outstanding service or achievements.

Abram W. Sempliner Memorial Award (University of Michigan Law School)

Junior Class Prize (University of Michigan Law School)

Editor-in Chief, *Michigan Law Review*

Order of the Coif

Excellent Pro Bono Award (Radio Station KNHC, Seattle Public Schools)

Outstanding Leadership Service and Commitment Award (Federal Communications Bar Association)

17. Published writings: List the titles, publishers, and date of books, articles, reports, or other published materials which you have written. It would be helpful for the committee to have three copies of each published writing. Please denote any of those for which you are unable to provide copies.

"Fifth Circuit Relies on Administrative Standards in School Desegregation Cases," 64 Mich. L. Rev. 340 (1965)

"Uninsured Casualty Losses are Within The Scope of I.R.C. Section 1231," 64 Mich. L. Rev. 735 (1966)

Three copies of the above are being sent under separate cover to the Committee Staff.

18. Speeches: Provide the Committee with three copies of any formal speeches you have delivered during the last 5 years of which you have copies and are on topics relevant to the position for which you have been nominated.

The following speeches (or notes from speeches) are attached:

Speech to ACUS reprinted in 53 University of Pittsburgh Law Review, 857 et. seq.

"Administrative Due Process" delivered to ABA Conference on Law and the Economy in the Soviet Union

"Judicial Review" delivered to congressional staff as part of ACUS symposium (similar speech given several different years)

"Executive Oversight of Regulation" delivered to the ABA Section on Administrative Law and Regulatory Practice

Three copies of the above are being sent under separate cover to the Committee Staff.

There may be other speeches relevant to the position for which I have been nominated, but I did not have a prepared text and do not now recall the details.

19. Congressional Testimony: Have you ever testified before a Committee of the Congress? If so, please provide details, including date(s).

a. Hearings before the Committee on the Judiciary, U.S. Senate, on the Nomination of Judge Antonin Scalia, August 6, 1986

b. Hearings before the Government Operations Committee, U.S. House of Representatives, on Reauthorization of the Office of Information and Regulatory Affairs (OMB) and Reforms to the Paperwork Reduction Act, July 25, 1989

c. Hearings before the Committee on Energy and Natural Resources, U.S. Senate, on S. 388 (to provide for 5-year staggered terms for members of the Federal Energy Regulatory Committee), April 17, 1989

d. Hearings before the Subcommittee on Treasury, Postal Service and General Government of Committee on Appropriations, U.S. House of Representatives, April 13, 1989

20. Selection:

(a) Do you know why you were chosen for this nomination by the President?

I believe I was chosen on the basis of my professional and personal qualifications and interest.

(b) What do you believe in your background or employment experience affirmatively qualifies you for this particular appointment?

20 years of regulatory practice (with emphasis on communications matters)

Public Member of Administrative Conference of the United States

Professor of Administrative Law (Adjunct) at Georgetown Law Center  
 Chair, ABA Section on Administrative Law and Regulatory Practice  
 President, Federal Communications Bar Association  
 General Counsel/Deputy Director for Program Policy of the Council of  
 Wage and Price Stability

#### B. FUTURE EMPLOYMENT RELATIONSHIPS

1. Will you sever all connections with your present employers, business firms, business associations or business organizations if you are confirmed by the Senate?

Yes, although I will receive certain payments on my withdrawal from my law firm, as described in response to Question C.1, below.

2. Do you have any plans, commitments or agreements to pursue outside employment, with or without compensation, during your service with the government? If so, explain.

No

3. Do you have any plans, commitments or agreements after completing government service to resume employment, affiliation or practice with your previous employer, business firm, association or organization?

No

4. Has anybody made a commitment to employ your services in any capacity after you leave government service?

No

5. If confirmed, do you expect to serve out your full term or until the next Presidential election, whichever is applicable?

Yes

#### C. POTENTIAL CONFLICTS OF INTEREST

1. Describe all financial arrangements, deferred compensation agreements, and other continuing dealings with business associates, clients or customers.

Upon confirmation, I will withdraw as a partner from Wilmer, Cutler & Pickering. Pursuant to the partnership agreement, I will receive a payout of my capital account over a 12-month period beginning three months after my withdrawal, and I will receive withdrawal payments calculated on the last three years' earnings that are payable over a 3-year period, again beginning three months after my withdrawal.

2. Indicate any investments, obligations, liabilities, or other relationships which could involve potential conflicts of interest in the position to which you have been nominated.

I currently have some investments which will be divested or transferred to a qualified diversified trust. My husband is a partner of Jones, Day, Reavis & Pogue. Any potential conflict of interests raised by these or other matters is addressed in letter accompanying my SF-278 (Att. 1), which specifies the recusals and other matters I would undertake if confirmed.

3. Describe any business relationship, dealing or financial transaction which you have had during the last 10 years, whether for yourself, on behalf of a client, or acting as an agent, that could in any way constitute or result in a possible conflict of interest in the position to which you have been nominated.

None that I am aware of other than those addressed in my SF-278 and accompanying letter (as indicated above).

4. Describe any activity during the past 10 years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat or modification of any legislation or affecting the administration and execution of law or public policy.

In my capacity as lawyer for clients of Wilmer, Cutler & Pickering, I participated in discussions with congressional staff intended to influence the passage, defeat or modification of selected provisions of the Financial Institutions Reform, Recovery and Enforcement Act (FIRREA) and the Oil Pollution Act of 1990. Also much of the legal services I have rendered has been in an attempt to affect the administration and execution of law and policy. Specifically, I have been in the regulatory/legislative practice area of the firm, and my major clients for the last two years have been CapCities/ABC; Communications Satellite Corporation; Community TV Foundation of South Florida; Federal National Mortgage Association; Federal Home Loan Bank of San Francisco; IMAX Systems Corporation; International Microwave Power Institute; Lewis & Roca (Council of Community of Blood Centers); National Public Radio; Seattle Public Schools; Swiss Bankers Association; Trans-Alaska Pipeline Liability Fund; and U S WEST. I have worked on

a variety of legal/policy matters for these clients, involving, among other issues, those relating to communications and administrative law.

In my capacity as Chair of the American Bar Association Section on Administrative Law and Regulatory Practice, I testified before Congress on three occasions as set forth in response to Question A.19, above. In addition, I met with Senate staff in 1988 or 1989 to discuss a bill regarding Executive oversight of regulations.

Finally, as a private citizen, I may have signed petitions or letters to Congressmen regarding pending legislation or other issues of law or policy.

5. Explain how you will resolve any potential conflict of interest, including any that may be disclosed by your responses to the above items. (Please provide copies of any trust or other agreements.)

I intend to divest and/or transfer to a qualified diversified trust those investments that may create a potential conflict of interest. The letter accompanying my SF-278 (Att. 1) details each step I will take to resolve potential conflicts issues.

6. Do you agree to have written opinions provided to the Committee by the designated agency ethics officer of the agency to which you are nominated and by the Office of Government Ethics concerning potential conflicts of interest or any legal impediments to your serving in this position?

Yes

#### D. LEGAL MATTERS

1. Have you ever been disciplined or cited for a breach of ethics for unprofessional conduct by, or been the subject of a complaint to any court, administrative agency, professional association, disciplinary committee, or other professional group? If so, provide details.

Not that I am aware of.

2. Have you ever been investigated, arrested, charged or held by any Federal, State, or other law enforcement authority for violation of any Federal, State, county or municipal law, regulation or ordinance, other than a minor traffic offense? If so, provide details.

No

3. Have you or any business of which you are or were an officer ever been involved as a party in interest in any administrative agency proceeding or civil litigation? If so, provide details.

My husband and I, together with several other neighbors, brought suit in Virginia against an upstream neighbor who was interfering with the flow of water through our property. My husband and I eventually sold the property.

In addition my husband and I were parties to a proceeding before the D.C. Zoning Board when we were building our house, which proceeding was ultimately settled.

4. Have you ever been convicted (including pleas of guilty or *nolo contendere*) of any criminal violation other than a minor traffic offense?

No

5. Please advise the Committee of any additional information, favorable or unfavorable, which you feel should be considered in connection with your nomination.

None that I am aware of.

#### E. FINANCIAL DATA

(Retained in Committee Files)

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### WRITTEN QUESTIONS FROM CHAIRMAN GLENN TO MS. KATZEN AND THE RESPONSES

#### I. NOMINATION PROCESS

*Question 1.* Why do you believe the President nominated you to serve as Administrator of the Office of Information and Regulatory Affairs (OIRA)?

*Answer.* I believe I was selected on the basis of my professional experience, personal qualifications, and interest.

*Question 2.* Why did you choose to accept this appointment, and what particular qualifications will you bring to this position?

*Answer.* I accepted this appointment because I believe I am capable of making a difference in improving and coordinating Federal paperwork and regulation and information resources management.

My qualifications include over 20 years of law practice specializing in administrative law (with an emphasis in communications law), a respect for and understanding of the role of the President and the Executive Office of the President, personal experience in agency rulemaking, the ability and experience to balance competing claims, and an understanding of how to manage and work effectively with people. Among professional activities that have helped me prepare for this position are my having served as Chair of the Section of Administrative Law and Regulatory Practice of the American Bar Association, President of the Federal Communications Bar Association, Public Member of the Administrative Conference of the U.S., and General Counsel and then Deputy Director for Program Policy of the Council on Wage and Price Stability in the Carter Administration. I have also taught Administrative Law as an adjunct professor at the Georgetown Law Center.

*Question 3.* Were any conditions, express or implied, attached to your nomination to be Administrator of OIRA?

*Answer.* No.

*Question 4.* Is there any issue, whether involving information resources management, rulemaking, or any other matter currently under consideration by OIRA, or any which could arise in the future, from which you may have to disqualify yourself? Please explain.

*Answer.* In a letter filed with my SF-278, I detailed the recusals and other ethics requirements I would undertake.

*Question 5.* Do you have any interest in any corporation, partnership, association, or other entity whose interest may be affected significantly by an OIRA decision?

*Answer.* I believe that, after I have undertaken the resignations, divestitures, and establishment of a qualified diversified trust as set forth in the letter accompanying my SF-278, I will not have any such interest in any corporation, partnership, association, or other entity whose interest may be affected significantly by an OIRA decision.

*Question 6.* Have you made any specific commitments with respect to the basic policies and philosophy which you will follow while Administrator of OIRA? Please describe.

*Answer.* I have made no specific commitments with respect to the policies and philosophy which I will follow if confirmed as Administrator of OIRA.

## II. ROLE AND RESPONSIBILITIES OF OIRA ADMINISTRATOR

*Question 1.* What do you consider to be the mission of OIRA?

*Answer.* OIRA's mission is to carry out the responsibilities assigned by statute, the President, and the Director of the Office of Management and Budget ("OMB"). Under the Paperwork Reduction Act ("PRA") and related statutes, OIRA currently has responsibility for review, coordination and policy direction of Federal agency acquisition, use, management and dissemination of Federal information resources, for reviewing and approving public information collections, and for coordinating and directing policy for Federal statistical activities. OIRA also has responsibility for review of Federal agency regulations under various Executive Orders.

I believe OIRA is uniquely situated by virtue of its position within OMB and its jurisdiction throughout the executive branch to exercise leadership in its assigned fields.

*Question 2.* What do you believe are the major challenges facing OIRA, and how do you propose to address them?

*Answer.* OIRA has been the focus of a great deal of attention in recent years, much of it critical. I believe that the major challenges now facing OIRA are to ensure that its professional staff is able to fulfill OIRA's responsibilities effectively and to exercise leadership on information resources management and the Federal regulatory process. Among other things, this will require strengthening cooperative and collegial relationships with the Federal agencies and with Congress, and responding constructively to the concerns that have been expressed by those in the public and private sector.

*Question 3.* What do you consider to be your basic role and responsibilities as OIRA Administrator?

*Answer.* I consider my basic role and responsibility as OIRA Administrator to enable OIRA to fulfill its mission, through commitment to that mission and the application of effective management skills.

*Question 4.* What objectives would you like to achieve in your tenure as Administrator of OIRA, and why?

*Answer.* As previously described in my Answers to Questions II.2 and II.3, if confirmed as OIRA Administrator I would seek to ensure that OIRA fulfills its responsibilities effectively and efficiently and to achieve greater cooperation with and responsiveness to the agencies, the Congress, and the public. I believe it is especially important for OIRA to provide constructive coordination, leadership and guidance to the various agencies in a fair and balanced manner, consistent with the legal responsibilities governing OIRA and the various agencies.

*Question 5.* Have you discussed the Administrator's position with the OMB Director, Deputy Director, or the nominee for Deputy Director for Management? If so, what is your understanding of how each expects you, as Administrator of OIRA, to relate to them and further, how they expect OIRA to operate within OMB? If not, what do you envision your responsibilities to be and the nature of your relationship with each of these positions, as well as the other offices and divisions of OMB?

*Answer.* I have discussed the Administrator's position with the Director, the Deputy Director, and the nominee for Deputy Director for Management. Each has expressed support for OIRA and expects the Administrator to carry out the responsibilities assigned to that Office. Based on these discussions, I would expect to seek their counsel on important policy issues and to be consulted by them on matters of interest to OIRA. The Director, Deputy Director and nominee for Deputy Director for Management have formed a strong leadership team for OMB and in turn for OIRA.

*Question 6.* What are your views on the organization of OIRA and the allocation of resources among the various activities undertaken by the office? Do you have any plans to reorganize or reallocate the resources of the office? Do you believe OIRA has sufficient resources with which to perform its statutory and executive functions?

*Answer.* At this time, I do not have any plans to reorganize or reallocate resources within OIRA, although at the same time I am not committed to preserving OIRA's existing structure or allocation of resources. I am aware that concerns have been expressed about the current allocation of resources, for example to OIRA's information resources management responsibilities. One of my top priorities if confirmed as Administrator will be a critical evaluation of the current structure and resource allocation within OIRA. As to the sufficiency of OIRA's resources to perform its statutory and executive functions, I understand only too well that resources are extremely limited throughout the government, and that any additional resources from within OMB would depend on the needs of OMB as a whole as determined by the Director.

*Question 7.* Questions have been raised about the consistency of OIRA desk officer decisions, in both paperwork clearance and regulatory review matters. Do you have plans for reviewing staff qualifications and for developing training opportunities?

*Answer.* I am aware that such questions have been raised. Ensuring consistency of policy across agencies was one of the fundamental reasons for centralizing the clearance of information collection and regulatory review in OIRA. Inconsistency of OIRA decisions compromises the basic mission of the Office. If confirmed, I will have the opportunity to assess OIRA staff directly on the basis of their work-product. At that point, I would consider the need for any corrective action, including training, that may seem appropriate or necessary.

### III. PAPERWORK REDUCTION ACT

*Question 1.* How would you describe the fundamental purposes of the Paperwork Reduction Act?

a. What are your views on furthering the goals of the Act to reduce government redtape?

b. What are your views on the relation of that goal to the Act's information resources management mandate and what are your views on fulfilling the IRM goal?

*Answer.* The PRA introduced a structure for managing the government's collection and use of information. By establishing procedures within the agencies and OMB, the PRA sought to ensure efficient and responsible management of government information so that ultimately the paperwork burden on the public would be reduced. The procedures are based on certain general principles: first, that agencies obtain and use to maximum advantage the information they need to discharge their responsibilities; second, that agencies consider both the burden on and the benefit to the public in designing information collection requests; and third, that agencies take into account legal and policy considerations of information resources management, including confidentiality and personal privacy.

a. OIRA was established by the PRA to further its goals of reducing government red tape by improving the management of Federal information collection. Since that

time, I believe there is a growing consensus among the public and those in government that red tape reduction is an increasingly important priority. The Commission on Federal Paperwork estimated that Federal paperwork cost the nation \$100 billion in 1977; the figures cited today are appreciably larger.

Reducing government red tape will not be a simple task. This Committee has recognized the fundamental conflict between the increasing public demand for expanded governmental protection and assistance, and the increasing public criticism of the costs and burdens of regulation. In addition, reducing government red tape is not solely within the authority of OIRA. Some of the government red tape is the result of statutory requirements that certain information be collected from or maintained by the public. Other red tape arises from established agency practices.

I agree with Director Panetta that the Act should be administered with consideration for the government's need for the information, the burden on the respondents, the benefit to the public of having such information available, and the cost to the economy and to U.S. competitiveness. I believe that the PRA review should be used for the purposes authorized by the PRA and not be converted into a general purpose policy tool for nullifying a statutory mandate. I also believe that OIRA should provide, through its policies and practices, leadership to the agencies in maximizing the use of the information collected and in minimizing red tape.

b. I believe that the goal of reducing red tape was directly related to the PRA's information resources management mandate. I understand that the Federal Paperwork Commission report that led to the passage of the PRA stated that "the real culprit of the paperwork burden is the mismanagement of information resources."

I believe that the PRA's information resources management mandate has become even more critical over time. Better information resource coordination and enhanced management of the collection, use and dissemination of government information should lead to a reduction of the government paperwork burden. In addition, effective implementation of the advances in information technology can assist agencies in facilitating the collection, and in processing an increasing amount of Federal paperwork, in a time of fiscal constraints.

**Question 2.** What is your understanding of the findings of the Commission on Federal Paperwork and its attention to the concept of information resources management? What are your views on the continued relevance of the Commission's findings?

**Answer.** I am generally familiar with the Commission's findings. I understand that the Commission's report was largely responsible for the enactment of the PRA. The report was based on paper record information technology. Since the report's publication in 1978, the technologies used to collect, process, store, and disseminate information have changed fundamentally. Nevertheless, the basic premises and recommendations of the report with respect to information resources management remain valid. It remains important for agencies to simplify and streamline their information collection activities through automation and to design their information systems around the concept of the information life cycle. Moreover, technological developments have increased the potential gains of a centralized information management program.

**Question 3.** In its transition report on Information Management and Technology Issues (GAO/OCG-93-5TR), the General Accounting Office stated:

The Federal Government spends over \$20 billion annually on new technology—and tens of billions more running current systems. Yet agency after agency still lack critical information needed to analyze programmatic issues, manage agency resources, control expenditures, demonstrate measurable results.

This situation exists despite the Paperwork Reduction Act's information resources management mandates, although GAO's 1992 report, "Perceived Barriers to Effective Information Resources Management" (GAO/IMTEC-92-67), offers some perspectives on the difficulties of fulfilling the IRM goals. What are your views on OIRA's role in addressing the problems highlighted by GAO and what specific steps do you envision undertaking to improve IRM?

**Answer.** The PRA authorizes OMB, and in particular OIRA, to oversee agency management of information technology in the Executive Branch. Among other things, OIRA's role is to clearly articulate principles of effective management for information technology; identify those agencies implementing those principles effectively; and share best practices (and problems) with other agencies. The objective is to build the agencies' management capacity for fulfilling their statutory responsibilities with respect to information technology. In addition, OIRA should reinforce these management principles through the review of agency budget proposals in concert with the budget side of OMB.

The GAO report identified three kinds of barriers (knowledge, institutional, and political) that have the potential to inhibit effective IRM. As GAO pointed out, Federal agencies face these perceived barriers to differing degrees. The Federal IRM community is beginning to show how agencies can apply information technology to streamline organizations, redesign work processes, and reduce burden on the public. OIRA as a central coordinating office can assist in that endeavour through the means identified above.

*Question 4.* The Council of State Governments, the National Conference of State Legislatures, and the National Governor's Association State Information Policy Consortium have issued a proposal for "A National Information and Service Delivery System." What are your views on that proposal?

*Answer.* The "National Information and Service Delivery System" is a paper that was designed to serve as the basis for further discussion and action to harness technology and information to re-engineer and streamline government operations at all levels. The proposal is to help government use the tools provided by information technology to: (1) improve government service; (2) protect the privacy and confidentiality of individuals and corporations; (3) promote citizen access to public information and governmental services; and (4) promote economic efficiency and social improvements. The basic goals are consistent with the Administration's policy as set forth in the February 22, 1993 report, "Technology for America's Economic Growth," and this Administration welcomes the opportunity to work cooperatively with state and local officials facing the same challenges we face at the Federal level.

*Question 5.* What are your views of GAO's role in improving information resources management, and in particular, what role can and should be played by GAO's Information Management and Technology Division (IMTEC)?

*Answer.* I have only limited familiarity with IMTEC, but I understand that IMTEC has government-wide jurisdiction for IRM. While IMTEC has, consistent with GAO's mandate, been primarily involved in auditing or assessing past performance of IRM policies, I understand that GAO has recently been working to identify "best practices" in IRM.

Congress is in the best position to determine the proper role and jurisdiction of GAO and IMTEC in improving information resources management. Whatever IRM mandate Congress gives GAO, OIRA will continue to work closely with GAO to avoid duplication, ensure consistent policies, and share experience and information.

*Question 6.* How would you describe the relation among the various information resources management functions delegated to OIRA and the manner in which you would apportion resources for them within OIRA?

*Answer.* OIRA has various IRM functions under several statutes, including the Federal Property and Administrative Services Act of 1949 (specifically, the Brooks Act), the Privacy Act of 1974, as amended, the Freedom of Information Act, as amended, the Computer Security Act of 1987, and the Budget and Accounting Act of 1950, as amended. In addition, Executive Order 12046 sets out certain responsibilities for Federal telecommunications. The primary effect of the PRA was to consolidate the management of these functions within OIRA. These functions include the oversight of Federal statistical activities, information collection, Federal automatic data processing, telecommunications acquisition and management, records management, and privacy.

These functions are closely interrelated by nature. The application of resources in one area will facilitate the work of another. For instance, work in the technology development area can inform policy development, while policy analysis can assist in evaluating the application and benefits of new technology. Moreover, the amount of resources required for one or another specific function may vary over time. At this point, I am not in a position to comment on the relative amount of resources to be devoted to each of the functions. As I stated in response to Question II.6, one of my top priorities if confirmed as Administrator will be to undertake a critical evaluation of the structure and allocation of resources within the OIRA.

*Question 7.* What particular experience do you bring to the job of Administrator that will help OIRA fulfill its responsibility in each of its statutorily defined functional areas?

*Answer.* As I detailed in my Answer to Question I.2, I have broad and extensive experience in administrative law and regulatory practice, with an emphasis in communications law. This experience has given me an understanding of how individuals and business entities interact with the government and how government action affects regulated industries (including the burden of paperwork). It has taught me that there are often competing interests at stake. It has shown me that creative solutions can often achieve the desired objectives more effectively and with less burden than the solution initially proposed. And it has made me realize the importance



of broad consultation with all interested entities, in the private and public sector, including the agencies and Congress.

I also bring management and leadership experience from government, private law practice and various professional activities. I believe I have the qualities Director Panetta identified as important for the position of OIRA Administrator. I hope that I will meet the expectations of the Director and this Committee.

*Question 8.* What are your views on the relationship of OIRA and the OIRA Administrator with agency IRM officials, and what plans do you have to improve the status, resources, and effectiveness of those officials?

*Answer.* I believe that the IRM advances that are possible can best be achieved through an effective partnership between OIRA and the agencies. OIRA cannot do the job alone. The IRM officials in the agencies are the ones who must make the day-to-day decisions and are ultimately responsible for ensuring that IRM functions to serve the agency's program officials. At the same time, a centralized information management program enables the agencies to share information and learn from others' successes and mistakes, and brings about greater coordination and standardization. I am committed to making the OIRA-agency partnership work, and, if confirmed, I will explore means of continuing to improve communication and cooperation. I will also look to Director Panetta to work with his colleagues in the Cabinet to forge a strong working relationship in this area between OMB and the other agencies.

*Question 9.* There is mounting concern about the need to develop a national information infrastructure adequate to the demands of the 21st Century. What are your views on this issue and what are your views on OIRA's role in insuring the development of a government information infrastructure for the electronic information age?

*Answer.* I share the President's views, as set forth in the February 22, 1993, report "Technology for America's Economic Growth," that developing an efficient, high-speed national communication system can have a dramatic, positive effect on U.S. economic and social development. I understand that the development of the national information infrastructure is a priority initiative for the Administration.

I believe that OIRA has several important roles to play in this initiative. First, OIRA has responsibility to coordinate policy regarding the dissemination of Federal information, which was one of five specific program elements enumerated in the President's report. Second, OIRA has statutory responsibility and substantive expertise in the information policy issues of security, privacy, intellectual property protection, and records management, all of which are implicated by a national information infrastructure. Third, OIRA is responsible under the PRA to assist OMB in evaluating agency proposals for investments in information technology, which includes the Federal investment portion of the infrastructure program.

*Question 10.* OIRA is responsible for developing government-wide information policy guidelines. What are your views on OIRA's proposed revision of OMB Circular No. A-130? What is the schedule for finalizing the proposed revision?

*Answer.* OMB issued Circular No. A-130, "Management of Federal Information Resources," on December 12, 1985, to set forth and maintain uniform government-wide IRM policies. Since 1985, new technologies have transformed the IRM environment, and government agencies have implemented new automated and electronic information systems. Moreover, Congress has enacted several laws bearing on IRM, including the Computer Security Act of 1987 (P.L. 100-235), and the Computer Matching and Privacy Protection Act of 1988 (P.L. 100-503).

A proposed revision of OMB Circular No. A-130 was published for comment in the *Federal Register* on April 29, 1992. I understand that a final revision is under development that benefits from the comments that were filed and takes into account the President's national information infrastructure initiative discussed in response to Question III.9. I do not have specific knowledge of the content or schedule for publication of that revision, but if it is not released before I am confirmed, I will review the materials promptly after my confirmation.

*Question 11.* In addition to revising Circular A-130, what actions can OIRA take to improve executive branch information policies? What priority will you give this effort?

*Answer.* As I stated in response to previous questions, I believe OIRA must exercise leadership on information policy within the Executive Branch, and I expect to give this effort a very high priority if I am confirmed as Administrator.

*Question 12.* Under the Paperwork Reduction Act, OIRA determines whether agency information collection activities are "necessary for the proper performance of the functions of the agency, including whether the information will have practical utility."

a. What is your view of OIRA's expertise to make that determination, both in terms of your particular skills and experience, and those of the OIRA staff?

b. What are your views on the term "practical utility" as it is defined by the Act and in OMB's regulations?

c. Beyond "practical utility," what are the components of "necessary for the proper performance of the functions of the agency"?

*Answer.* a. As the Question indicates, OIRA has the statutory responsibility for this determination. Although there have been various criticisms of OIRA in recent years, I am unaware of any complaints regarding OIRA's expertise to make the particular determination contemplated by the statute.

I believe that it would be premature at this point for me to attempt to assess the strengths and weaknesses of the OIRA staff's expertise, particularly as to any specific function. If confirmed as OIRA Administrator, I will have the opportunity to work with the OIRA staff on a day-to-day basis. From that direct observation, I will be able to evaluate the effectiveness of the OIRA staff and take such action as may be appropriate and necessary to improve OIRA's work in this area.

With regard to my skills and expertise, I have previously stated in my Answer to Questions I.2 and III.7, that I believe that my experience both in private practice and in government has given me first hand experience with both the benefits and the burdens of government information collection, and it has taught me the importance of a fair assessment of an agency's need for information.

b. Under the PRA, "practical utility" is defined as "the ability of an agency to use information it collects, particularly the capability to process such information in a timely and useful fashion." 44 U.S.C. 3502(16). OIRA's regulations further define "practical utility" as "the actual, not merely the theoretical or potential, usefulness of information to an agency, taking into account its accuracy, adequacy, and reliability, and the agency's ability to process the information in a useful and timely fashion." 5 CFR 1320.7(o). In determining whether information will have 'practical utility,' OMB will take into account whether the agency demonstrates actual timely use for the information either to carry out its functions or to make it available to the public, either directly or by means of a public disclosure or labeling requirement, for the use of persons who have an interest in entities or transactions over which the agency has jurisdiction. In the case of general purpose statistics or record-keeping requirements, 'practical utility' means that actual uses can be demonstrated."

In effect, this is a pragmatic definition of "practical utility": it sets goals of quality and usefulness to the agency and to the public that assure that the data collected provide timely, statistically valid, and otherwise useful information, and can thus serve to benefit both the agency and the public. I believe that this is a sensible approach to defining a term that is conceptually simple but difficult to articulate.

c. The statutory standard is "necessary for the proper performance of the functions of the agency, including whether the information will have 'practical utility'." The use of the term "including" makes clear that "practical utility" is only one, although a very important consideration, in applying the standard. The language also appears to contemplate that there be a nexus between the information collected and the mission of the agency—namely, that obtaining the information is to enable the agency to carry out its mission—and that it not be duplicative of information that is already available to the government. In addition, the term "proper performance" suggests that the collecting and use of the information be in accord with the other legal and policy matters that guide the agency's performance of its mission, such as confidentiality, privacy and like considerations.

*Question 13.* The Paperwork Reduction Act defines the term "burden." What methodology is most appropriate for determining "burden"?

*Answer.* The PRA defines "burden" as "the time, effort, or financial resources expended by persons to provide information to a Federal agency." 44 U.S.C. 3502(3). I understand that OIRA determines "burden" under the PRA by estimating the paperwork "burden hours" imposed on the public, and that this generally is a determination of the number of hours that individuals, businesses, and institutions spend to comply with the recordkeeping and/or reporting requirements.

I have been advised that measuring "burden hours" requires some judgments about what the information collection requires, including mastering instructions, assembling materials, conducting tests, inspections or surveys, organizing the information, testing its accuracy, and maintaining records. The "burden hours" measurement may be subjective and/or imprecise to some extent. I understand that OIRA has made efforts to refine the measurement of "burden." If confirmed as Administrator, I will have the opportunity to evaluate OIRA's measurement methodology.

I should add that, in addition to its own work, OIRA currently requires agencies to state on each collection of information the agency's estimate of the average actual burden hours for each response. 5 C.F.R. 1320.21. OIRA then seeks public comments on whether these estimates are realistic. Apparently these comments are increasingly more useful, particularly when an information collection request is being reviewed after its initial three-year period—by which time the public will have had actual experience in complying with the particular requirements and its comments may be especially telling.

**Question 14.** While government information activities impose burdens on the American public, they also gather information needed by the government.

a. What are your views on information collection as a positive function, and the tension between the need to collect information and the mandate to reduce burdens?

b. In the context of the paperwork clearance process, how should the assessment of "burden" relate to the assessment of the "benefit" to be derived from information to be collected by the Federal Government, and what methodology is most appropriate for determining "benefit"?

**Answer.** a. There are certainly positive functions for information collection, both for the agency in the proper performance of its mission and for the public. In order to effectively formulate and administer regulations—whether they affect environmental quality, civil rights, public health and safety, housing and educational opportunity, labor standards, consumer protection or market regulation—Federal agencies must have extensive, current and accurate information. And beyond regulation, the quality of all public policy decisions depends on the sufficiency of the information available to government. In addition, the Federal agencies disseminate valuable information to the public and other governmental entities, which would never be acquired or assembled but for Federal information collection activities.

Nevertheless, as the question recognizes, there is a fundamental tension between the public's interest in information collection and the public criticism of the burdens that such activities impose on individuals, businesses and the U.S. economy as a whole. I believe that the criticism arises in part from the perception by some that not all information collection requests are justified by the agency's mission or that not all requests have been sufficiently tailored to reduce the burden on the public. As I stated in response to earlier questions, I believe that OIRA has an important role to play in assisting agencies to obtain the information they need while reducing the burden of that collection process on the public.

b. I believe that in the context of the paperwork clearance process, the assessment of burden relates to the assessment of benefit to be derived from any government information collection, since the ultimate objective of any government action is to achieve a net benefit for the public. I am not aware of any formal methodology used by OIRA for determining the "benefit" of information collections. Some aspects of "benefit" may be susceptible to measurement; others are not, but rather involve common sense, an understanding of the agency's program, and the possible other uses to which the information can be put.

**Question 15.** What is your understanding of the areas of Federal agency information collection activities that pose the greatest burdens on the American public? What are your thoughts on targeting particular areas of information collection activity for increased scrutiny by OIRA?

**Answer.** I understand that the greatest burden on the American public in terms of information collection is attributable to the activities of the Treasury Department, specifically the Internal Revenue Service. I am advised, however, that this information collection burden is dictated by extremely specific statutory requirements, and for good reason. I also recognize the concerns that have been voiced about the burden of multiple forms, particularly on small businesses, state and local governments, educational institutions, and nonprofit organizations.

Although I have no specific plans to target particular areas of information collection for increased OIRA scrutiny, I am aware of suggestions that OIRA consider a pilot project focussing either on a sector of the economy that is subject to information requests from various agencies or on one of the types of entities or institutions listed above. I would welcome the views of the Committee on this or other targeting proposals.

**Question 16.** What are your views on activities, other than the form-by-form review of information collection proposals, that might be undertaken by OIRA to eliminate duplicative information collection activities among agencies, and otherwise improve coordination among agencies with regard to common or overlapping information collections? Do you have any specific plans for such efforts?

**Answer.** Form-by-form review is important because once a form is reviewed and approved it becomes part of the established paperwork burden. Nevertheless, I rec-

ognize that form-by-form review is only an incremental review, and that more work needs to be done to eliminate duplicative information collection activities among agencies. One area for exploration is increasing consultation and coordination among agencies so that they are better aware of the extent to which information already exists in other agencies, and how possible modifications to their information requests may make the information obtained useful (or more useful) to another agency. Such increased coordination could also lead to increased standardization so as to simplify the collection process, particularly where similar information is to be supplied to several agencies. In addition, as I discuss in my response to Question III.31, I believe the time is now ripe for developing a Federal information locator system, with all of its attendant benefits.

**Question 17.** The Paperwork Reduction Act requires that the public have an opportunity to comment on proposed information collections under review by OIRA, as well as on information policies and procedures under development by OIRA.

a. What are your views on making such public comment as meaningful as possible?

b. More generally, what plans do you have for improving public understanding of OIRA paperwork reduction decisions and for ensuring public access to related documents?

**Answer.** a. As a practitioner, I have appreciated the opportunity for meaningful public comment. I believe that public comment can make a valuable contribution to the agency decision-making process.

I think that there are two aspects to increasing the utility of public comment. First, OIRA should continue its work with the agencies to ensure that requests for comment elicit meaningful responses. Notices of information requests in the *Federal Register* should be in plain English and clearly convey the nature and specificity of the information sought. The agencies should continue the practice of providing an estimate of the burden of effort involved in collecting the requested information and filling out the forms. Also, as noted in my response to Question III.13, the three-year paperwork approval period under the PRA permits opportunities for public comment after the regulation has been in place; if the potential burden of the information collection was not understood when it was first proposed, the public will have an opportunity to augment the record before the collection activity can be continued for another three-year period.

Second, OIRA should continue to effectively communicate to the public that public comment is important, is taken seriously, and can make a difference. In addition to the measures described in part (b) of this Question, I understand that it has been OIRA's practice to seek public comment before promulgating information policies and procedures, and that it recently sought comments not only through the *Federal Register* but in electronic form on the Internet as well. I am told that of the 180 comments OIRA received on its proposed revision to OMB Circular A-130, 79 were in electronic form. If confirmed as Administrator, I would continue these efforts and explore other ways of obtaining more meaningful public comment.

b. While I do not have any specific plans to improve public understanding of OIRA's paperwork decisions, I believe that two areas are particularly promising. First, as noted in responses to part (a) of this Question, OIRA should continue its work with the agencies to ensure that they communicate with their constituencies about paperwork reduction and information collection decisions. I noted the fact that under PRA, agencies must give notice in the *Federal Register* that OIRA has a proposed collection of information under review. In addition, OIRA regulations require that agencies include on their approved forms an estimate of burden hours (on which the approval was predicated) and an invitation to direct comments or suggestions for reducing the burden to OMB. 5 C.F.R. § 1320.21. This revision was intended to increase awareness and solicit comments on paperwork reduction beyond the limited pool of *Federal Register* readers. I am told that these form-based notices have resulted in over 4,000 comments, a number of which have resulted in the simplification and reduction of paperwork.

Second, there are now a number of coalitions of private and public interest groups that are active on PRA issues. OIRA should explore the possibility of developing a meaningful dialogue among these coalitions and OIRA and the agencies. These coalitions can provoke valuable discussions and offer useful ideas for further consideration.

I do not have any specific plans for ensuring public access to documents related to OIRA's paperwork decisions. The PRA requires that written communications between OIRA and an agency concerning a proposed information collection (including OIRA's decisions to approve or disapprove the collection of information) or between OIRA and the public shall be made available to the public. 44 U.S.C. 3507(h). I understand that these documents are placed in a docket that is made available during

normal working hours at a public reading room. 5 C.F.R. 1320.19(a). If I am confirmed as Administrator, I will have an opportunity to determine if compliance with these requirements is sufficient to achieve the goals of the PRA.

**Question 18.** Over the past decade, OIRA has been criticized for using its paperwork clearance process to control substantive decision-making authority delegated to Federal agencies by Congress, rather than to merely improve information management practices and reduce paperwork burdens.

a. What are your views on OIRA's record, these criticisms, and steps that you would take to address these criticisms?

b. Where is the line between OIRA's authority to oversee agency information activities and the authority of Federal agencies to carry out their substantive missions?

**Answer.** a. I am aware that OIRA has been so criticized, although I am not familiar with any of the specifics. Without commenting on the past, I believe that it is important to focus PRA reviews on paperwork and information management considerations. If confirmed, I will work to assure that this focus is scrupulously observed.

b. The PRA makes a very clear distinction between the paperwork review authority of OMB and the substantive policies of the agencies. The PRA gives OIRA the power to approve or disapprove information collection requests subject to specific standards set forth in the PRA, including the standard discussed in response to Question III.12. At the same time, the PRA states unequivocally that "nothing" in the PRA shall be interpreted as increasing or decreasing the authority of the President or OMB with respect to the substantive policies and programs of the agency. 44 U.S.C. §3518.

**Question 19.** What are your views on the 1990 Supreme Court decision, *Dole v. Steelworkers*, and the findings and recommendations of GAO in "Paperwork Reduction: Agency Responses to Recent Court Decisions" (GAO/PEMD-93-5, February 1993)?

**Answer.** The Supreme Court held in *Dole v. Steelworkers*, 494 U.S. 26 (1990), that information collection requirements mandating disclosure of information to third parties were not reviewable under the PRA. A subsequent decision by the D.C. Court of Appeals in *Action Alliance v. Sullivan*, 930 F.2d 77 (D.C. Cir. 1991), clarified that, in certain cases at least, the PRA applies to requirements to maintain records for review by both third parties and the Federal Government. I understand that these cases have led to uncertainty over the scope of the PRA as applied to third party disclosure, which in turn has led to inconsistent practices among the agencies. I understand that the GAO Report recommended that OMB provide guidance to Federal agencies about the conditions under which third party information disclosures were covered by the PRA. I have not had an opportunity to assess the degree to which overall guidance is necessary or would be helpful. I also understand that there are pending bills that would clarify Congressional intent in this area. So far as I am aware, the Administration has not taken a position on the various proposals currently pending in Congress.

**Question 20.** Please describe your understanding of OIRA's statistical policy and coordination function, the extent to which OIRA has fulfilled its statistics mandate, and your plans for ensuring that mandate is fulfilled.

**Answer.** Under the provisions of the PRA and Executive Order 10033, OIRA and its statistical policy staff provide leadership, coordination, and guidance for the decentralized Federal statistical system. To fulfill this role, OIRA issues and oversees government-wide statistical standards and policies; develops and fosters long-term improvements in statistical programs; coordinates the Federal Government's participation in international statistical activities; and reviews and coordinates budget submissions of statistical agencies.

I am informed that OIRA has achieved some recent advances in these areas. For example, I understand that OIRA has continued its fine work in the Joint Program of Survey Methodology. In furtherance of its role as coordinator, OIRA has recently convened a meeting of the Statistical Agency Heads Council. I also understand that OIRA has been instrumental in launching a multi-agency program—called the Economic Statistics Initiative—to improve the quality of the Nation's most vital measures of domestic and international economic performance. It is also participating in a multi-agency project to undertake a basic revision of the Standard Industrial Classification to improve its relevance for policy analysis. In addition, I understand that this June there will be an international conference to begin the same type of revision process for the Standard Occupational Classification, a statistical standard that has not been revised since 1980.

I believe that statistical policy and coordination is an important function for OIRA. I am committed to fulfilling OIRA's mandate in this area.

*Question 21.* The Paperwork Reduction Act calls for OIRA to periodically review and revise long-range plans for improved coordination and performance of statistical activities and programs. When do you anticipate undertaking such a review and what are your views on the content of that review?

*Answer.* I am advised that OIRA has taken the lead in improving the coordination and performance of statistical activities and programs through many of the projects identified in response to Question III.20. If confirmed, I will review these efforts and work to develop other appropriate means of meeting OIRA's statutory mandate.

*Question 22.* Many of OIRA's statutory responsibilities for the coordination of statistical activities involve reviewing department budget proposals. Is this an effective method of coordination? How do you propose to improve that review and coordination function?

*Answer.* The PRA authorizes OIRA to coordinate the Federal Government's decentralized statistical system in a number of ways, including reviewing department budget proposals. I believe such review provides an important vehicle for coordinating implementation of short and long-range plans to improve Federal data quality. If confirmed, I expect to explore ways in which such review can be better integrated with the types of inter-agency task forces described in response to Question III.20.

*Question 23.* For some time, OMB has considered proposing legislation to allow confidential information to be shared between statistical agencies for statistical purposes.

a. What do you see as the advantages and disadvantages of such legislation?

b. What are your views on permitting the IRS to share personal income data with the Census Bureau for the development of more accurate statistics on income?

*Answer.* a. The potential advantages of sharing confidential information among statistical agencies for statistical purposes are higher quality and consistency of Federal statistics at a reduced cost and reporting burden of producing those statistics. The potential disadvantages are that the public may be unwilling to provide the degree of cooperation that is essential to successful statistical data collections because of perceived threats to the confidentiality of such data.

b. Any proposal for permitting the IRS to share personal income data with any other government agency raises some concern about privacy and confidentiality. I understand that under the current Tax Code, the IRS provides selected taxpayer information to the Census Bureau for the purpose of conducting the Bureau's censuses and surveys. I am advised that the procedures for determining the scope and nature of the taxpayer information provided to the Census Bureau have been administered by IRS with due regard for the confidentiality rights of taxpayers; the taxpayer information that has been provided to the Census Bureau has been well used; and the process that controls these exchanges has been well managed.

*Question 24.* Despite considerable public concern and recent congressional hearings, OMB has not made plans to revise definitions of race categories for statistical purposes. What are your views on OIRA's role in this issue, and what steps do you envision taking to develop a consensus among the competing interest groups?

*Answer.* OMB's definitions of race and ethnic categories are used not only for statistical purposes, but also for program administrative purposes. As a result, a change in the definitions that might not be controversial if the data were used only for presenting statistics might well have significant programmatic or policy implications. Accordingly, any such revision would require the broadest consultation and the most careful review of the consequences. There are a variety of ways of undertaking such consultation and review. I believe OIRA should take a significant role in developing a consensus in this area, and I welcome the Committee's views about how best to proceed.

*Question 25.* The cost of statistical information on a given medium varies widely from agency to agency. What are your views on developing a coordinated or consistent approach for pricing statistical information across agencies?

*Answer.* I believe that it is appropriate to have a coordinated and consistent approach for pricing statistical information across agencies, and that OIRA can assist in that effort by establishing a policy concerning the costs that are properly recovered. It should be clear, however, that the costs themselves may well vary from agency to agency and from one data set to another, so that a uniform pricing policy would not necessarily result in uniform pricing of statistical information products on the same medium either within or across agencies.

*Question 26.* Please describe your understanding of OIRA's records management function, the extent to which OIRA has fulfilled its records management mandate, and your plans for ensuring that the mandate is fulfilled.

*Answer.* The PRA requires OIRA to advise and assist the Archivist of the United States and the Administrator of General Services to promote coordination in the administration of records management functions; to review agency compliance with records management statutes and regulations; and to coordinate records management policies and programs with OIRA's other PRA activities.

The primary records management challenges faced by the government arise from the current technological transition from an information infrastructure that is based primarily on paper to one that is based primarily on electronic records. Shifting to electronic records systems, and quickly, is essential to making the Federal Government more cost-effective and more responsive to the public. This shift is also the only way the government can accommodate the enormous quantity of information it must process to manage its large, complex programs. But as the government moves to electronic records, it cannot simply duplicate processes that existed in the paper world. The long-term retention of electronic records, particularly when software and hardware change every few years, is a major management challenge. The increased ease of access and manipulation of electronic records also heightens problems of privacy, confidentiality and control.

I am told that OIRA has taken the lead in an inter-agency task force on electronic data interchange; and that the proposed revision of Circular A-130 published last year added records management policy that had been absent from the 1985 version. Even so, I am aware of concerns voiced in Congress and in the private and public interest sector that OIRA can and should do more in this area. If I am confirmed, I will work to ensure that OIRA provides the appropriate leadership in the field of records management.

*Question 27.* What are your views on improving the effectiveness of the National Archives and Records Administration (NARA) in overseeing agency records management practices?

*Answer.* I am informed that NARA has responsibility to "provide guidance and assistance to Federal agencies with respect to ensuring adequate and proper documentation of the policies and transactions of the Federal Government and ensuring proper records disposition" under Section 2904 of Title 44 of the United States Code. That law also provides for the establishment of the Federal Records Centers under NARA, in which agencies store records for eventual disposition or archiving.

The transition to electronic records described in response to Question III.26 poses a special challenge for NARA. Unlike paper records, electronic records left untended for several years can easily be destroyed inadvertently, trapped in a medium which can no longer be read, stored without proper documentation so that the data is not understandable or retrievable, or deteriorate to the point of uselessness.

OIRA has responsibility under Section 2904 and the PRA to advise and assist NARA in its records management functions. I am told that OIRA has been working with the NARA staff on records management issues and in particular on the issues that are likely to become more critical as the government increasingly shifts to electronic records. If confirmed, I will support OIRA's continuing efforts in this area.

*Question 28.* Please describe your understanding of OIRA's privacy functions, including information disclosure, confidentiality and security, the extent to which OIRA has fulfilled its privacy mandate, and your plans for ensuring that that mandate is fulfilled.

*Answer.* OIRA's privacy functions are derived from three specific statutory charges. The Privacy Act of 1974, as amended, gave OMB responsibility for overseeing Federal agencies' compliance with the Privacy Act and for issuing interpretive guidance and regulations. The PRA confirmed and broadened OMB's Privacy Act responsibilities. The Computer Security Act of 1987 gave OMB general responsibilities to assure the security of Federal automated information systems which contain sensitive information, including Privacy Act information.

I am informed that OIRA and its predecessor organization within OMB have been overseeing Federal compliance with the Privacy Act since 1975. I understand that OIRA has issued a series of documents intended to help agencies interpret the Act's provisions and to advise them on new developments with implications for privacy, like computer matching. In addition, pursuant to its authority under PRA to review information collection requests, OIRA desk officers routinely review proposed requests for privacy implications.

Here, as in other areas discussed above, OIRA is well situated to assist agencies to protect the confidentiality and security of government information. I understand, however, that some questions have been raised about OIRA's capacity to fulfill its privacy mandate. If confirmed as OIRA Administrator, I will be closely examining OIRA's record and current practices on privacy functions and take the steps that are necessary to fulfill OIRA's responsibilities in this area.

*Question 29.* What are your views on the sufficiency of the Privacy Act? Should the Act be revised to reflect changes in information technology that have occurred since enactment of the Act? What are your views on computer matching, front-end verification, and related issues involving privacy in the computer age?

*Answer.* Although I am not an expert on the Privacy Act, I believe it has been successful on several fronts. It has created a legal structure governing how Federal agencies may use records about individuals. It has raised the awareness of the Federal workforce about privacy issues. And it has permitted thousands of citizens to see their own records and seek to correct those that are in error.

The Act, however, is now nearly twenty years old. Although it anticipated many of the potential privacy consequences of computerized recordkeeping, it was still the product of the recordkeeping environment of the 1970's—paper and mainframe computer operations. The current environment of microcomputing, distributed processing and telecommunications-supported information systems is radically different. While there have been tremendous efficiency advances, the potential for inappropriate access, dissemination, or alteration of information has also increased. Not surprisingly, therefore, some have argued that these changes suggest the need for reassessment and possible modification of the Privacy Act.

I understand that there are serious privacy issues with respect to front-end eligibility verification computer matching, and that the Privacy Act was amended in 1988 to bring procedural regularity to this process. It bears emphasis that this is only one kind of computer matching. We now have the ability to share and merge data with ease, and to link individuals in a manner that would have been impossible in a paper records environment. I believe that it will soon be necessary to assess these new information uses in light of the existing Privacy Act. If confirmed as OIRA Administrator, I expect to become more familiar with these issues, and to assure that OIRA provides strong leadership in this area.

*Question 30.* What are your views on the sufficiency of the Freedom of Information Act, in terms of addressing issues of access to information maintained in electronic format?

*Answer.* The language of the Freedom of Information Act ("FOIA") makes no distinction between records maintained in hard copy or in an electronic format. When I was Chair of the American Bar Association Section on Administrative Law and Regulatory Practice, the Section adopted a recommendation that was approved by the House of Delegates that FOIA should be interpreted to cover existing electronic records. Legislation was introduced last year on this subject. I do not know whether similar legislation has been introduced this Session or whether the Administration has formally taken a position on it. If confirmed, I look forward to working with Congress on these issues.

*Question 31.* The design and operation of a Federal Information Locator System (FILS) is required by the Paperwork Reduction Act. While that mandate has never been fulfilled, technological developments over the last decade have suggested to many that an effective FILS is now a readily attainable goal. What is your view of FILS, its problems, and its potential?

*Answer.* OIRA should help develop an effective FILS now not only because it is required by the PRA, but also because an effective FILS will materially promote OIRA's other statutory obligations. An effective government-wide system for locating Federal information would be a powerful tool in OIRA's efforts to coordinate agency information practices, evaluate the need for information, and promote agency sharing and public dissemination of valuable information.

Notwithstanding the technological advances, the challenges of developing such a system are enormous. The amount and diversity of Federal Government information are staggering; and it is spread through a large number of Federal agencies. While information technology may be near the point where a significant breakthrough for FILS is possible, difficult problems of coordination remain to be addressed.

I understand that OIRA has been working with an inter-agency committee to explore cost-effective methods to disseminate locator information to the public. Two promising short-term solutions are to aggregate locator information onto compact disk read-only memory (CD-ROM) disks for broad dissemination to libraries and other institutions, and to establish dial-in electronic bulletin boards where the public can learn what information products are available and how they can be ordered. This latter approach is the subject of a pilot project at the Commerce Department, and will be tested by the Government Printing Office should legislation recently passed by the Senate become enacted.

Ultimately, the development and increasing use of public electronic information networks, such as the Internet and the National Research and Educational Network (NREN), will provide a powerful and cost-effective method for agencies to disseminate



nate their information to the public. Vice President Gore is actively supporting these efforts, and OIRA is working to help accomplish the Administration's goals.

**Question 32.** Please describe your understanding of OIRA's information technology functions, the extent to which OIRA has fulfilled its mandate, and your plans for ensuring that that mandate is fulfilled.

**Answer.** I understand OIRA's information technology functions to be a subset of its IRM responsibilities, including policy making and oversight of agency activities. OIRA accomplishes much of this oversight, as provided in the PRA, by working with the General Services Administration and with other parts of OMB, through the review of agency budget proposals for information technology. I am also informed that OIRA develops and disseminates information technology policy through special programs and publications like its Program for Priority Services, its annual "Information Resources Management Plan of the Federal Government," and special guidance reports like "Budget Examining Techniques for Evaluating Information Technology Investments."

Chairman Glenn recently quoted a December 1992 GAO Report finding that despite large Federal expenditures on new information technology, Federal agencies have lagged behind the private sector in realizing the efficiency benefits of the new technology. Such a report raises serious concerns that I will seek to address, consistent with OIRA's mandate, if confirmed as Administrator.

**Question 33.** What are your views on the Federal Government's role in the development of advanced information technology? Should OIRA have a role in this effort?

**Answer.** In the context of developing a U.S. information infrastructure, the Federal Government has several roles in developing advanced information technology, including: establishing policies for certain kinds of technologies, such as telecommunications or intellectual property; promoting development of advanced information technology to meet the programmatic needs of the government; and exercising leadership in convening public and private sector groups to agree on standards for information technology.

Many of these roles are performed by other Federal agencies. OIRA can assist in these efforts by facilitating information sharing by agencies about efforts to apply and support the development of advanced information technology. OIRA can also help agencies develop adequate analytical frameworks to make judgments about whether the potential for advanced information technology projects justifies the proposed investments. Finally, OIRA can help agencies bring their activities relating to advanced information technology into conformity with law, regulation, and policy.

**Question 34.** What are your views on OIRA's role in developing Federal science and technology information (STI) policy? What is your understanding of the STI issue, and the relationship between OIRA and the Office of Science and Technology Policy (OSTP)?

**Answer.** I understand that the Office of Science and Technology Policy has responsibility for advising on the development and use of scientific and technical information in the Federal Government. The primary agency responsible for dissemination of STI is the National Technical Information Service at the Department of Commerce. I understand that OIRA works with both agencies, providing consultation and advice so as to promote effective STI programs.

**Question 35.** What are your views on the affirmative obligation of Federal agencies to disseminate information to the public?

**Answer.** I believe that government information is a valuable public asset which should be broadly disseminated, subject to privacy and confidentiality concerns. The government should make information available to the public on timely and equitable terms. It is also important to encourage the existing diversity in information sources, including those in the private sector. These principles apply whatever the medium, printed or electronic, in which the information has been collected or stored.

**Question 36.** What are your views on the role OIRA should play in the management of executive branch information dissemination functions?

**Answer.** The day-to-day management of information dissemination functions is, of course, the responsibility of each agency. Under the PRA, OIRA has responsibility to "develop and implement Federal information policies, principles and standards" in a number of areas, including information dissemination. I understand that OMB Circular No. A-130 is the vehicle for expressing those policies, principles and standards. As noted in my response to Question III.10, OMB has published a proposed revision of Circular A-130. I understand that the final revision is currently under review. I have no specific knowledge of the contents or the schedule of that revision.

Beyond the promulgation of Circular A-130, OIRA can and should work with agencies to promote dissemination of information and, where appropriate, demonstrate its leadership by example.

*Question 37.* Questions have been raised as to the proper role of the Government Printing Office, which is a legislative body, in the management of executive branch information dissemination functions. What are your views on this subject?

*Answer.* Title 44 of the United States Code grants the GPO broad authority over government printing. I am aware that this has raised separation-of-powers questions. Since the GPO is a legislative body, its proper role should be determined by Congress, and I am not in a position to comment on any constitutional questions that may be implicated by whatever decision Congress makes.

*Question 38.* What are your views on the development of Federal agency electronic information dissemination capabilities, for example, as reflected by the Security and Exchange Commission's EDGAR system, the Patent and Trademark Office's Automated Patent System, the Department of Commerce's National Trade Data Bank, and the Environmental Protection Agency's Toxic Release Inventory?

*Answer.* The systems listed in the question are examples where agencies have moved from paper-based to electronic information dissemination. They represent a variety of media and formats. Preliminary assessments are extremely favorable, with demonstrable benefits for both the agencies and the public. These benefits include increased speed and accuracy of communication; reduced cost of transmission and revision of information; and improved ability to adjust to the needs of diverse recipients. The diversity of approaches represented by these systems will provide a basis for agencies to compare the relative advantages and disadvantages of different systems, and it will assist OIRA in advising agencies on the strengths and weaknesses of various systems to achieve their programmatic objectives.

*Question 39.* Historically, the Depository Library System, and more recently the Freedom of Information Act, have been the primary vehicles for providing public access to government information. The increased computerization of information and publications in electronic form have limited both. Some agencies have contended that computerized information is not accessible under FOIA, and most electronic publications do not wind up in the depository libraries. Apart from OMB Circular No. A-130, do you plan to develop an information policy to explicitly address electronic information dissemination and access? If so, when do you anticipate that policy being promulgated?

*Answer.* The Depository Library System and the Freedom of Information Act are two very different means of achieving dissemination of government information. The first is a long standing vehicle for the dissemination of government information to the public generally; the second is a means of answering specific inquiries of individuals for particular information. As noted in my response to Question III.35, I believe that government information should be broadly disseminated, subject to privacy and confidentiality concerns. Moreover, the more government information that is disseminated through such general disclosures, the less need there will be for the less efficient dissemination of information under FOIA.

The reference to the effect of increased computerization of information on the accessibility of such information under FOIA was addressed in my response to Question III.30. I understand that the effect on the Depository Library System is currently under review as part of the proposed revision of Circular A-130, and I have no specific knowledge of the contents or schedule of that revision. I am not aware of any other plans to develop an information policy that explicitly addresses electronic information. However, I believe that issues will continue to arise as we move from a paper-based to an electronic information system, and that OIRA should be positioned to anticipate those issues and to respond to them when they do arise.

*Question 40.* Considerable attention has been focused on the electronic dissemination of information. Much less effort has been directed toward the electronic collection of information. What are your views on OIRA's role in the development of policies and practices to increase the electronic collection of information?

*Answer.* OIRA's role with respect to the electronic collection of information is the same as its role with respect to the electronic dissemination of information. In both instances, it has the responsibility for establishing policies that will maximize the benefits of effective information resources management. I believe that there are substantial advantages of electronic information collection. Several of the systems noted in response to Question III.38 involve electronic information collection as well as dissemination. The agencies' experiences with these systems will provide a base for OIRA to assist other agencies in developing or improving their electronic information collections.

I understand that OIRA's policies on electronic information collection are part of its Circular No. A-130, which is presently under review. If confirmed, I will review OIRA's efforts in this area to ensure that OIRA provides the appropriate leadership and direction.

*Question 41.* What will be your role in helping to achieve reauthorization of the Paperwork Reduction Act?

*Answer.* I would welcome the opportunity, if confirmed, to work with this Committee and others in Congress to obtain such a reauthorization of appropriations.

#### IV. REGULATORY REVIEW

*Question 1.* Under the previous two administrations, OIRA reviewed Federal agency regulatory activities under Executive Orders 12291 and 12498, as well as E.O.'s 12606, 12612 and 12630.

a. What are your views on OIRA's regulatory review record under the two previous Administrations?

b. What are your views on the previous administration's use of a regulatory "moratorium," and to what extent is it an appropriate mechanism for setting and/or implementing regulatory policy?

*Answer.* a. OIRA's regulatory review has been the subject of considerable attention, including widespread controversy and criticism, over the last several years, which unfortunately has helped to obscure the often quite valuable work done by OIRA. This Committee has catalogued some of the more serious complaints, including allegations of: extended delays in rulemaking; unwarranted displacement of agency decisions; application of statutorily impermissible criteria; excessive secrecy; and inappropriate ex-parte and conduit contacts. These are serious concerns. I can assure the Committee that if confirmed as Administrator, I will do everything in my power to address these concerns and, where appropriate, make necessary changes in the near future.

b. I understand that the stated purpose of the moratorium imposed by the previous Administration was to slow down or stop altogether the promulgation of additional regulations because of concern about the cumulative burden of all regulations on the U.S. economy. The concern is a valid one, but my impression is that the moratorium was not a particularly successful or productive effort. As a general matter, I believe that rather than simply imposing across-the-board restraints, it is more constructive and productive to work with the agencies to develop more effective approaches that impose fewer burdens and to encourage, where appropriate, non-regulatory alternatives. Moreover, a moratorium may have its own costs, particularly in those instances where agency action may be greatly needed.

*Question 2.* What are your views on regulatory review? What are its benefits and what are its problems? To the extent you support it, what should be the guiding principles of regulatory review?

*Answer.* I believe that review of Executive Branch regulatory activity, in which OMB has a central role to play, is both appropriate and necessary. President Clinton and Director Panetta have both expressed the view that centralized regulatory review provides the most effective vehicle for ensuring that Executive Branch regulations are consistent with statutory mandates and reflect the Administration's goals and policies to the extent they may lawfully do so, and that decisions made by one agency do not conflict with policies or actions taken by other agencies. Regulatory review also provides the opportunity for an appraisal—detached from the originating agency's legitimate focus on programmatic goals—as to whether the agency is most effectively achieving its objectives. Specifically, centralized review can assist the agencies by ensuring that they have asked the right questions, considered a wide range of alternatives to achieve their objectives effectively with as little burden as possible, fully evaluated the bases for the regulations, and articulated the regulations in a manner that is comprehensible to the affected individuals or entities. OMB is uniquely well-suited to assist the agencies in this way.

It is imperative, of course, that these OMB review functions not result in an agency's disregarding or defying its statutory mandate, that they be exercised so as to ensure fairness, and that they not be implemented arbitrarily or capriciously. Also, the review should not unduly delay the agency's exercise of its statutory mandate.

In conclusion, I believe that Federal agencies should exercise the decision-making authority on regulatory issues assigned to them by statute, while the reviewing body, with greater openness and real accountability, should ensure that the agency's decision is made well and fairly.

*Question 3.* What is your understanding of the Clinton Administration's plans with regard to the structure, operation and supervision of centralized regulatory review? What is OIRA's role in any such regulatory review process? What is the timetable for the implementation of any changes to the regulatory review system inherited from the previous administration?

*Answer.* One of President Clinton's first actions as President was to deliver a memorandum to OMB Director Panetta on January 21 stating that the Council on

Competitiveness had been terminated, directing that new regulations be approved prior to publication by agency officials appointed by the President and confirmed by the Senate, and stating that the existing Executive Orders on regulatory management would continue to apply pending a review by the new Administration. That review is currently underway, but will not be completed until those expected to be responsible for review functions in the new Administration are in place. OMB is, of course, a central participant in the Administration's review. If I am confirmed as OIRA Administrator, completion of this review will be the first item on my agenda.

*Question 4.* Please list any regulatory proposals that have been at OIRA for more than 60 days, how long they have been under review, and your plans for expediting their review.

*Answer.* In response to the President's January 21 memorandum, Director Pannetta sent a memorandum on January 22 to the heads of Federal agencies stating that appointees of the new Administration should have an opportunity to review new regulations before they are approved in final. As a result, some agencies withdrew some draft rules from OIRA review, or, after appropriate internal political-level review, requested OIRA to move ahead. Other draft rules remain in abeyance, pending appointment of agency officials and completion of internal agency review.

Pending confirmation, I have asked those in OIRA (as well as others with whom I have spoken) to avoid any discussion with me of any particular regulation or other specific action pending before OIRA. To respond to this question, however, I asked the OIRA staff to provide me with the number of draft rules submitted to OIRA by officials of the current Administration that have been at OIRA for more than 60 days. The following table, as of April 30, 1993, indicates how many have been under review for more than 60 days. (Since none would have sent to OIRA before January 21, 1993, the maximum period of time any could have been pending at OIRA is 99 days.)

*Rules Pending at OIRA More Than 60 Days*

<i>Agency</i>	<i>Number</i>
USDA .....	1
DEd .....	1
HUD .....	2
DOT .....	1
VA .....	1
GSA .....	1
Total .....	17

*Question 5.* What particular skills would you bring to the office of Administrator that would help you oversee any OIRA regulatory review process?

*Answer.* I believe that the skills I described in response to Questions I.2 and III.7 will be particularly important to the performance of my responsibilities in this area.

*Question 6.* In 1991 and 1992, the Council on Competitiveness, chaired by then-Vice President Quayle, took on an active role in supervising OIRA's regulatory review activities. As you may know, the Council's refusal to disclose publicly its regulatory review activities was a major impetus behind the introduction of S. 1942, the "Regulatory Review Sunshine Act of 1991."

a. What are your views on the activities of the Council on Competitiveness?

b. To what extent do you believe any OIRA regulatory review process can or should be supervised by other staff within the executive office of the President?

c. To what extent, and under what rules or procedures, are non-OIRA/OMB staff within the executive office of the President presently (i.e., since January 20, 1993) involved in regulatory review deliberations?

d. If OIRA regulatory review were to be supervised by any non-OMB executive office of the President officials, what public accountability procedures are in order?

*Answer.* Prior to his election, President Clinton was highly critical of the activities of the Council on Competitiveness for its willingness to overrule agencies in response to the entreaties of special interests, without taking into account the views of all sides of a regulatory issue and in a way that precluded public awareness of the process and ultimate accountability. Not surprisingly, as noted in my response to Question IV.3, one of President Clinton's first acts as President was to announce the termination of the Council on Competitiveness. I agree with the President's critique of the Council and his elimination of the Council on these grounds.

Parts (b) and (d) of the question ultimately go to the issue of the role that OIRA will play in Executive oversight of regulation. The specific questions of how OIRA

will conduct its review and the extent to which other officials in the Executive Office of the President will participate in that process are among the subjects that are being considered in the current Administration review discussed in my response to Question IV.3. Pending completion of that review, I am not able to comment on these issues; however, I would welcome the input of the members of the Committee on these and related matters.

As I stated in responding to Question IV.4, I have asked those in OIRA (as well as others with whom I have spoken) to avoid any discussion with me of any particular regulation or other specific action pending before OIRA. I am therefore unable to say to what extent non-OIRA/OMB staff within the Executive Office of the President is presently involved in regulatory review deliberations.

**Question 7.** The Council on Competitiveness was described by the previous administration as performing the functions of the presidential Task Force on Regulatory Relief detailed in E.O. 12291. What are your views on both the majority decision and the dissent in *Meyer v. Bush*, No. 92-5029, U.S. Court of Appeals for the D.C. Circuit (January 8, 1993)?

**Answer.** The issue that divided the majority and the dissenting judges in *Meyer v. Bush* was whether the President's Task Force on Regulatory Relief, headed by then-Vice President George Bush, was an "agency" for purposes of the FOIA. There is no longer a President's Task Force on Regulatory Relief, nor is there any Council on Competitiveness. For present purposes, however, it is important to note that there is no dispute that OMB, including OIRA, is an "agency" under the FOIA and hence is subject to its terms.

**Question 8.** What are your views on S. 168, the "Regulatory Review Sunshine Act of 1993?" More generally, what are your views on the wisdom of enacting statutory controls on centralized regulatory oversight?

**Answer.** I understand that S. 168 is modelled on S. 1942, which was reported by the Committee during the last Congress in an attempt to correct the previously identified concerns with the way regulatory review was implemented under the previous Administrations.

President Clinton has made it very clear that his Administration is firmly committed to more open government. I share that commitment. The precise manner in which OIRA and any other regulatory review will be subject to "sunshine rules" is one of the subjects being considered in the current Administration review discussed in response to earlier questions. I respectfully suggest that, once that review is completed and there has been some period of time to assess its implementation, Congress will be better able to determine if there are issues that require a legislative solution.

**Question 9.** What are your views on the relation between the Administrative Procedure Act's concern for participation in agency rulemaking and OIRA regulatory review?

**Answer.** The Administrative Procedure Act sets forth a framework for public participation in rulemaking before the agencies with the statutory authority for, and the substantive expertise on, the issues that are the subject of the rulemaking. The extent to which the public should participate in the OIRA (or other centralized) regulatory review process is among the subjects that are under consideration in the current Administration review of regulatory management.

**Question 10.** What steps do you believe OIRA should take to involve the public in its regulatory review deliberations? What documents relating to OIRA's regulatory review process are appropriate for public inspection? At what point in the process should they be made available to the public?

**Answer.** The issues raised in this question are very important and undoubtedly are being raised at this time in part because of frustration with the way regulatory review was conducted under the past Administration. Again, these are issues that are under consideration in the current Administration review, and I would welcome the views of the Committee on these and related matters.

**Question 11.** What plans do you have for improving public understanding of OIRA regulatory review decisions and for ensuring public access to regulatory review documents?

**Answer.** This question raises two separate issues. The first goes to the public's awareness of OIRA's function. For over four years now, OIRA has been functioning without an Administrator, and hence with no political appointee to inform the public about OIRA's functions. Hopefully, if I am confirmed as Administrator, I would be able to devote some effort to increasing the public's understanding of the positive role OIRA plays in the regulatory review process.

The second part of the question goes to public access to regulatory review documents. As noted previously in response to Question IV.10, this is an issue subject

to the current Administration review. Once that review is completed and a policy is established, I will work to ensure that it is fully and fairly implemented.

*Question 12.* Some observers of the regulatory review process believe that all OIRA contacts with executive branch agencies should be logged and docketed for the public record. Other analysts feel that such contacts are privileged and exempt from public disclosure. What do you consider as the proper approach?

*Answer.* Here, as above, the Committee is raising very important questions, and, as the question itself recognizes, two different views have generated support. Accountability and integrity are essential to the regulatory review process. It is also vital that regulators and Executive Branch advisors to the President be able to communicate freely and in confidence. Weighing these important considerations is one task of the on-going Administration review. I would, of course, welcome your views on this issue.

*Question 13.* How do you view the relationship between OIRA's statutory responsibilities to reduce paperwork burdens and manage information resources under the Paperwork Reduction Act and OIRA's review of regulations under Executive Orders 12291 and 12498 or any successor order?

*Answer.* Although these responsibilities are distinct in both source and purpose, I agree with Director Panetta that OIRA's paperwork reduction and regulatory review responsibilities are interrelated. As noted in my response to Question III.18, many regulations include a paperwork component. Because of this interrelationship and because of efficiency concerns (particularly relevant in the current climate of fiscal constraint), in most instances the individual responsible for reviewing regulations from a particular agency also has responsibility for reviewing that agency's information collection requests. In many cases, the individual develops familiarity with the agency's programmatic function and thus is also better able to assist in developing effective IRM strategies for the agency.

*Question 14.* Concerns have been raised as to the tensions, if not conflicts, between the regulatory principles and review standards of Executive Orders 12291 and 12498, and the specific substantive legislative mandates given to agencies by Congress. What are your views on the subject?

*Answer.* As I recognized in my response to Question IV.1, one of the criticisms of the way regulatory review was conducted during the last few years was that it was insufficiently sensitive to legislative mandates. As I hope I have made clear in my responses to Questions IV.1, IV.2, and IV.6, I believe that it is not the right of OIRA, through its paperwork reduction or regulatory review function, to ignore, let alone frustrate, Congress' will as expressed in legislation.

*Question 15.* What are your views on cost/benefit analysis—its problems, and its potential? What do you believe are the primary costs, and primary benefits, OIRA should consider in the evaluation of the regulatory impact of a proposed rule? How should these factors be determined?

*Answer.* As noted in response to Question III.14b, governmental regulatory actions should involve sufficiently clear benefits to justify any costs they may impose on the public. Thus, unless the governing statute otherwise provides, an agency should demonstrate that the societal costs of a proposed regulation are outweighed by the societal benefits of that regulation. Of course, the difficulties are in the details: how to assess the costs and how to assess the benefits, and this obviously involves determining *which* costs and *which* benefits are to be included, as well as how to measure them fairly and accurately.

While much work has been done in this area, there is no single universally accepted cost/benefit methodology. So, too, while there are general principles for quantifying some of the factors, each individual situation has to be considered in its own context.

The precise use of cost/benefit analyses and a host of questions related to that issue are among the subjects currently under review by the new Administration. I am determined, however, that any cost/benefit analyses that are used will be performed fairly and in as objective a fashion as feasible.

*Question 16.* Should OIRA attempt to measure non-market benefits such as the quality of life or the value of public health? If so, by what methodology?

*Answer.* If the agencies and/or OIRA are to conduct cost/benefit analysis on proposed regulations, then all pertinent benefits (as well as costs)—both market and non-market—should be considered. I do not know of a universally accepted method for measuring non-market benefits, but, if I am confirmed as Administrator, I will have the opportunity to review OIRA's past practices in this area, as well as the approaches that the agencies have used (and outside experts have suggested) in their consideration of these issues. I would also, of course, welcome the views of the Committee on this issue.

**Question 17.** What are your views on risk assessment, and its relation to risk management?

**Answer.** Risk assessment is separate from, though a necessary element of, risk management. Risk assessment is essentially a scientific or technical determination of the level of risk that exists or would be created by a certain action. Risk assessment is thus a fact-driven, rather than policy-driven process. Risk management, on the other hand, involves decision-making as to what levels of risk are acceptable and/or desirable, given the pertinent statutory mandate and any relevant social, economic or other policy implications of achieving a different risk level within that mandate. Risk management therefore essentially involves a legal and policy judgment.

**Question 18.** In March 1992, the Governmental Affairs Committee held a hearing to examine OIRA's review of a proposed OSHA rule using "risk/risk analysis." In July 1992, GAO issued a report very critical of OIRA's analysis (GAO/PEMD-92-33). Many of the same issues were addressed in the Department of Labor's December 1992, response to OIRA's September 1992, criticism of OSHA's risk assessment in its cadmium rulemaking. What are your views on the "risk/risk" issue and what can be done to improve OIRA's cost/benefit and risk assessment efforts?

**Answer.** A risk/risk analysis—which essentially asks whether there are unintended risks or consequences of a particular action and how they compare with the intended risk reduction—has been used for a number of years and has gained a measure of acceptance in the economics literature. I understand that there has been substantial criticism of the way OIRA raised risk/risk analysis in suspending its review of an OSHA proposed rule in March of 1992. I am aware that GAO concluded that, in that instance, OIRA's use of risk/risk analysis amounted to a cost/benefit analysis, and that cost/benefit analysis is prohibited under the Occupational Safety and Health Act for health standards. However, GAO also noted that the OIRA staff did not believe that its use of risk/risk analysis was tantamount to a cost/benefit analysis. I intend to study these issues carefully if confirmed and to ensure that OIRA uses only appropriate and lawful methodologies and analyses in its review of regulations.

**Question 19.** What are your views on risk communication and other uses of information as alternatives to traditional modes of prescriptive regulations?

**Answer.** Risk communication can be a viable alternative to prescriptive regulations in some circumstances. Where the information communicated will be received and can be understood and acted upon by its intended audience, it may be an appropriate means of achieving the ultimate objective. However, where the information may not get through to or cannot readily be understood by its audience, or where that audience has little or no power to act upon it, risk communication has substantially less utility. Thus, depending on all of the circumstances, a risk communication approach such as labelling a product as dangerous rather than banning or otherwise regulating the product may or may not be the best regulatory strategy.

**Question 20.** What are your views on negotiated rulemaking? Questions have been raised in the past as to the effectiveness of negotiated rulemaking given that OIRA regulatory review may result in significant changes to a proposed rule in ways that are inconsistent with a previously negotiated consensus agreement. What are your views on the matter? Would you support binding OIRA to such negotiated consensus agreements?

**Answer.** A great deal of very useful work has been done in the area of negotiated rulemaking. I believe that it has much to commend it as an alternative to more formal procedures for adopting regulations. By bringing together agency officials and diverse interests affected by a regulation in an informal and cooperative setting, negotiated rulemaking has real potential for achieving effective, efficient and sensible results.

Of course, it bears emphasis that a negotiated rulemaking must be consistent with an agency's statutory mandate, and similarly it should be consistent with the Administration's goals and policies. Whether OIRA could have different criteria for review of negotiated—as opposed to other—rulemakings is an interesting question which warrants further consideration. I would welcome your views on this issue.

**Question 21.** What are your views on E.O. 12606, "The Family"?

**Answer.** As Director Panetta pointed out in answering a similar question, this Executive Order continues in effect pending the completion of the Administration review referred to in responses to earlier questions. That review encompasses both the substance and the procedures set out in all of the existing Executive Orders governing oversight of regulations. I welcome the Committee's views on this particular Executive Order.

**Question 22.** What are your views on E.O. 12612, "Federalism," especially with regard to the issue of preemption?

*Answer.* As Director Panetta pointed out in answering a similar question, this Executive Order continues in effect pending the completion of the Administration review referred to in responses to earlier questions. That review encompasses both the substance and the procedures set out in the existing Executive Orders governing oversight of regulations. I welcome the Committee's views on this particular Executive Order.

*Question 23.* What are your views on E.O. 12630, "Governmental Actions and Interference with Constitutionally Protected Property Rights"? Please include in your answer a discussion of your views on legislation to codify the E.O. 12630, specifically, S. 50 in the 102nd Congress, and S. 177, the "Private Property Rights Act of 1993," in the 103rd Congress.

*Answer.* As Director Panetta pointed out in answering a similar question, this Executive Order continues in effect pending the completion of the Administration review referred to in responses to earlier questions. That review encompasses both the substance and the procedures set out in the existing Executive Orders governing oversight of regulations. It is my understanding that the Attorney General sent Chairman Glenn a letter on April 26, 1993, opposing S. 177.

*Question 24.* What are your views on the Regulatory Flexibility Act and the role of OIRA in facilitating its implementation? Please include in your answer your views on the findings and recommendations of GAO in "Regulatory Flexibility Act: Inherent Weaknesses May Limit Its Usefulness for Small Governments" (GAO/HRD-91-16).

*Answer.* I am well aware that there has been some concern about the implementation of the Regulatory Flexibility Act. For example, I know that many agencies routinely include boilerplate language in their proposed rules to the effect that the Act does not apply, and that others give the Act only cursory attention in the course of their rulemaking proceedings. The intent of the Act is highly salutary, and I look forward to working with the Committee to better achieve its purposes. I understand that certain of the GAO recommendations would be carried out by pending legislation. The Administration has not as yet taken a specific position on this legislation, so I cannot comment on it at this time.

*Question 25.* Do you have any suggestions for improving agency compliance with the Regulatory Flexibility Act's requirement to perform regulatory flexibility analyses of proposed rules with an impact on small entities?

*Answer.* I have no specific suggestions for improving agency compliance with the Act, but I believe that there may be areas where OIRA can provide additional assistance as a part of whatever regulatory review structure is developed by the Administration's ongoing review.

*Question 26.* What are your views on the adequacy of the Small Business Administration's implementation of the Regulatory Flexibility Act? To what extent can OIRA facilitate more rigorous implementation of the Act?

*Answer.* I have no basis to assess the past implementation of the Act by the SBA. I understand that GAO has found that the SBA can do more; as noted in response to Question IV.24, certain of the GAO recommendations are incorporated in pending legislation, on which the Administration has not yet taken a position.

*Question 27.* The EPA has established an Office of Small Communities to give small governments a voice in the EPA regulatory process. How well has this process worked in terms of balancing the need to fulfill environmental protection mandates with the capabilities and resources of small governments to comply with such mandates? Should the EPA model be established in other regulatory agencies?

*Answer.* I have no basis to assess the past record of the EPA's Office of Small Communities. I understand that the EPA Administrator has expressed her commitment to this Office, and has stressed her desire to work with local governments facing costly and complex environmental mandates. I would welcome the opportunity to work with her in these efforts if I am confirmed.

*Question 28.* Given the Clinton Administration's emphasis on policies to promote the development of critical technologies, do you foresee a role for regulation as a means to promote such development? What role would OIRA have in this effort?

*Answer.* The President's February 22, 1993 technology statement observes that "[r]egulatory policy can have a significant impact on the rate of technology development in energy, biotechnology, pharmaceuticals, telecommunications, and many other areas." It commits to a review of the "nation's regulatory 'infrastructure' to ensure that unnecessary obstacles to technical innovation are removed." I expect OIRA to participate meaningfully in that review.

*Question 29.* What are your general views on a "command and control" regulatory approach as opposed to one that relies on a more market-oriented approach?

*Answer.* As a general matter, my professional experience has led me to prefer the use of "performance standards" and market-oriented approaches rather than "design



specifications" or "command and control" regimes. However, just as I believe that it is not a question of whether regulation is "good" or "bad", but rather whether there is a better, more effective, more efficient regulation, so, too, I do not subscribe to any one form of regulation for all circumstances. The question in each case is how best to achieve the objectives of the legislation or regulation.

#### V. RELATIONS WITH CONGRESS

*Question 1.* Do you agree without reservation to respond to any reasonable summons to appear and testify before any duly constituted committee of the Congress if confirmed?

*Answer.* Yes.

*Question 2.* Do you agree without reservation to reply to any reasonable request for information from any duly constituted committee of the Congress if confirmed?

*Answer.* Yes.

*Question 3.* What are your views on the oversight role of Congress? What relationship do you envision having with the congressional committees that oversee OIRA?

*Answer.* Congress's oversight role is both appropriate and highly desirable. As noted in my response to Question II.4, one of my objectives as Administrator would be to establish better relations between OIRA and Congress. In answering the two previous questions, I have expressed my willingness to respond to any reasonable request from Congress. If I am confirmed, I look forward to the opportunities for constructive discussions between OIRA and Congress.



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